

S230104

In The
Supreme Court of California

JAIME A. SCHER, et al.,
Plaintiffs and Respondents,

vs.

JOHN F. BURKE, et al.,
Defendants and Appellants.

SUPREME COURT
FILED

MAY 17 2016

Frank A. McGuire Clerk

Deputy

After a Decision by the Court of Appeal
Second Appellate District, Division Three—Case No. B235892

On Appeal from the Los Angeles Superior Court
Hon. Malcolm Mackey, Judge—Case No. BC415646

**REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
ANSWER BRIEF ON THE MERITS
OF RICHARD ERICKSON, WENDIE MALICK,
RICHARD B. SCHRODER, AND ANDREA D. SCHRODER**

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RICHARD B. SCHRODER, and ANDREA D. SCHRODER**

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RICHARD B. SCHRODER, and ANDREA D. SCHRODER**

REQUEST FOR JUDICIAL NOTICE

Defendants and appellants Richard Erickson, Wendie Malick, Richard B. Schroder, and Andrea D. Schroder, request that the Court take judicial notice, under Evidence Code sections 452, 453, and 459, of the following documents:

A. September 27, 1971 letter from Senator Robert J. Lagomarsino to Governor Ronald Reagan, attached hereto as Exhibit A;

B. March 16, 1971 California Chamber of Commerce, Legislative Issue Report, No. 71-3, attached hereto as Exhibit B.

C. April 15, 1971 letter from Legislative Counsel George Murphy to Assemblyman Paul Priolo, attached hereto as Exhibit C;

D. Senate Bill 504 (1971 Regular Session), and amendments thereto, attached hereto as Exhibit D;

E. July 23, 1971 letter from Southern California Rock Products Association to Assemblyman Paul V. Priolo, attached hereto as Exhibit E;

F. Senate Bill 291 (1970 Regular Session), attached hereto as Exhibit F;

G. Pertinent portions from the Legislative Counsel's Digest for SB 291 (1970 Regular Session), attached hereto as Exhibit G;

H. Pertinent portions of 7 West's Annotated California Codes, Civil Code sections 654-1090 (1982 ed.), pp. 432-433 attached hereto as Exhibit H;

I. April 25, 1997 Memorandum of Opinion and Order in *Shingle Springs Rancheria v. Grassy Run Community Services*, U.S. District Court, Eastern District of California case no. CIV-S-96-1414 DFL JGM, attached hereto as Exhibit I.

A supporting memorandum is attached hereto.

DATED: May 16, 2016

Respectfully submitted,

GARRETT & TULLY, P.C.

Ryan C. Squire

Zi C. Lin

Motunrayo D. Akinmurele

By: _____


Ryan C. Squire

Attorneys for Defendants and

Appellants Richard Erickson,

Wendie Malick, Andrea D.

Schroder, and Richard B. Schroder

MEMORANDUM

I.

The Court Should Take Judicial Notice of the Legislative History of Civil Code Section 1009.

It is well-settled that a reviewing court may consider the legislative history of a statute to ascertain its meaning. (*Bostick v. Flex Equipment Co., Inc.* (2007) 147 Cal.App.4th 80, 108 [54 Cal.Rptr.3d 28] (concurring opn. of Croskey, J.) Because the construction of a statute presents a purely legal question that this Court reviews independently, it may take judicial notice of legislative history that was not introduced in the trial court. (*Peart v. Ferro* (2004) 119 Cal.App.4th 60, 81 [13 Cal.Rptr.3d 885], citing Evid. Code, §§ 452 & 459.)

The plain language of Civil Code section 1009 provides that *no use* of non-coastal property can ripen into an implied dedication post-1972. There is no distinction between “recreational” and “non-recreational” use. This Court should take judicial notice of the following legislative history under Evidence Code sections 452, 453, 459, which confirm that the doctrine of implied dedication of non-coastal property was prospectively abrogated by section 1009:

A. September 27, 1971 letter from Senator Robert J. Lagomarsino to Governor Ronald Reagan, attached hereto as Exhibit A. This document was not introduced in the trial court.

B. March 16, 1971 California Chamber of Commerce, Legislative Issue Report, No. 71-3, attached hereto as Exhibit B. The Chamber of Commerce was a

sponsor of Senate Bill 504, which enacted section 1009. “The statements of the sponsor of legislation are entitled to be considered in determining the import of the legislation.” (*Kern v. County of Imperial* (1990) 226 Cal.App.3d 391, 401 [276 Cal.Rptr. 524]; see *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1136, fn. 1 [104 Cal.Rptr.2d 377, 17 P.3d 735] [taking judicial notice of sponsor’s statements].) This document was not introduced in the trial court.

C. April 15, 1971 letter from Legislative Counsel George Murphy to Assemblyman Paul Priolo, attached hereto as Exhibit C. This document was not introduced in the trial court.

D. Senate Bill 504 (1971 Regular Session), and amendments thereto, attached hereto as Exhibit D. These documents were no introduced in the trial court.

E. July 23, 1971 letter from SB 504 proponent Southern California Rock Products Association to Assemblyman Paul V. Priolo, attached hereto as Exhibit E. The statements of a proponent of legislation may be considered to determine legislative intent. (*Woodman v. Superior Court* (1987) 196 Cal.App.3d 407, 414 [241 Cal.Rptr. 818], superseded on other grounds, *Mackey v. Superior Court* (1990) 221 Cal.App.3d 1124, 1127, fn. 3 [270 Cal.Rptr. 905].) This document was not introduced in the trial court.

II.

The Court Should Take Judicial Notice of the Legislative History of Civil Code Section 846.

The Court should also take judicial notice of the legislative history of Senate Bill 291, which amended Civil Code section 846. That statute provided, in general, that an owner of property “owe[d] no duty of care” to keep the land safe for, or to warn, those using the property for certain specified recreational purposes.

The legislative history of section 846 shows that the Legislative knew how to limit the applicability of a statute to “recreational” use, but declined to do so with respect to section 1009. This further supports the conclusion that section 1009 prospectively abrogates *all use* of non-coastal property from ripening into implied dedication, not just “recreational” use.

The Court has “discretion to take judicial notice of any matter specified in Evidence Code section 452, including official acts of the legislative and executive departments.” (*Peart, supra*, 119 Cal.App.4th at p. 81.)

The Court should take judicial notice of the following documents:

A. Senate Bill 291 (1970 Regular Session), attached hereto as Exhibit F. This document was not introduced in the trial court.

B. Pertinent portions of the Legislative Counsel’s Digest for SB 291 (1970 Regular Session), attached hereto as Exhibit G. This document was not introduced in the trial court.

C. Pertinent portions of 7 West's Annotated California Codes, Civil Code sections 654-1090 (1982 ed.), attached hereto as Exhibit H. This document was not introduced in the trial court.

III.

The Court Should Take Judicial Notice of the Memorandum of Opinion and Order in *Shingle Springs Rancheria v. Grassy Run Community Services.*

Evidence Code 451, subdivision (d) permits the Court to take judicial notice of the "Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States."

In *Shingle Springs Rancheria v. Grassy Run Community Services*, case no. CIV-S-96-1414 DFL JGM, the United States District Court for the Eastern District of California held that section 1009, subdivision (b) bars *all* use, not just recreational use, from ripening into an implied dedication. This further supports the conclusion that the instant Court of Appeal correctly interpreted section 1009.

The Court should take judicial notice of the District Court's April 25, 1997 Memorandum of Opinion and Order, attached hereto as Exhibit I. This document was not introduced in the trial court.

* * *

For the foregoing reasons, appellants respectfully request that the Court take judicial notice of the foregoing matters.

DATED: May 16, 2016

Respectfully submitted,

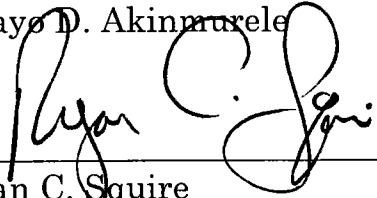
GARRETT & TULLY, P.C.

Ryan C. Squire

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By: _____

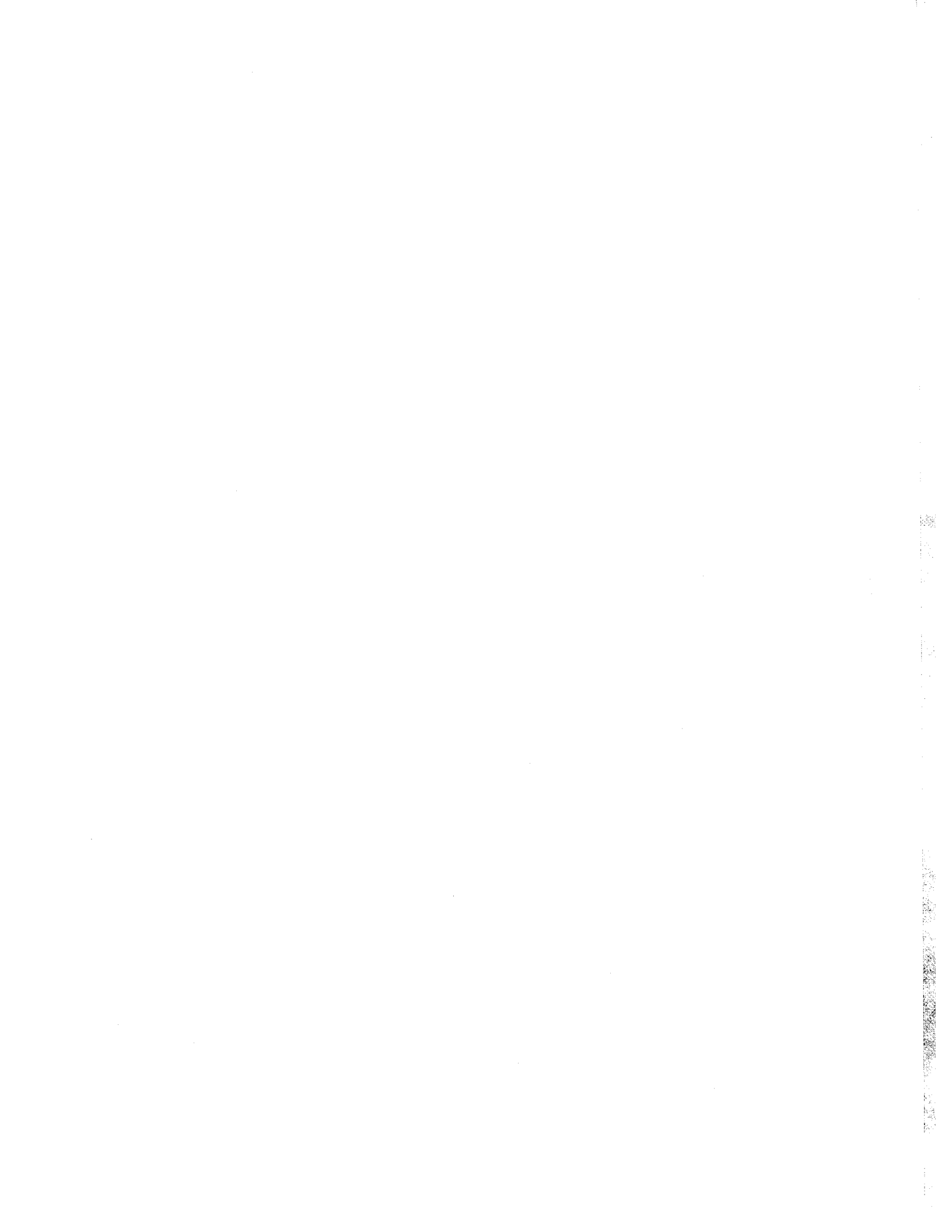

Ryan C. Squire

Attorneys for Defendants and

Appellants Richard Erickson,

Wendie Malick, Andrea D.

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REPLY TO:
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PHONE: (805) 963-4249

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STATE CAPITOL
SACRAMENTO, CALIF. 95814
PHONE: (916) 445-5405

ROBERT J. LAGOMARSINO

TWENTY-FOURTH SENATORIAL DISTRICT
VENTURA AND SANTA BARBARA COUNTIES
VICE CHAIRMAN, NATURAL RESOURCES AND WILDLIFE COMMITTEE

CALIFORNIA LEGISLATURE

Senate

MEMBER, SENATE RULES COMMITTEE

STANDING COMMITTEES
RULES
FINANCE
JUDICIARY
NATURAL RESOURCES AND
WILDLIFE

INTERIM COMMITTEES, BOARDS AND
COMMISSIONS
PENAL CODE REVISION
WILDLIFE CONSERVATION BOARD
JOINT LEGISLATIVE BUDGET
JOINT RULES
COMMISSION OF THE CALIFORNIAS
COMMITTEE ON INTERSTATE
COOPERATION

September 27, 1971

The Honorable Ronald Reagan
Governor, State of California
State Capitol
Sacramento, California

Dear Governor Reagan:

I am writing in support of my Senate Bill 504, relating to implied dedication of lands.

Senate Bill 504 was introduced by me at the request of the California State Chamber of Commerce and a number of other organizations interested in land ownership.

This bill will encourage landowners to allow public recreational use of their lands without loss of property rights through implied dedication from future public uses. It does not affect any rights that may have already vested through past public use and does not affect any rights that have been gained, or may be gained, as a result of public expenditures on private lands. It also provides a procedure which may be used by an owner if he wishes to permanently dedicate property. Enactment is necessary to assure that some 10 million acres of private land will be kept open to public use for recreational purposes. Much land has already been closed.

As amended on July 20 the bill distinguishes between property adjacent to the coast, bays and estuaries and other private lands in the State. Owners of property lying within 1,000 yards inland of the mean high tide line of the ocean, or between the mean high tide line and a nearer public road, would be required to take positive steps to avoid losing rights to property through future public uses. If the coastal owner is willing to allow public use of coastal lands he could do one of the following:

(R00) 688-1017

LEGISLATIVE INTENT SERVICE

- (a) Record consent to use
- (b) Post appropriate signs
- (c) Publish notice of consent, or
- (d) Enter into an agreement with a governmental agency providing for public use of the land.

Such use could be subject to reasonable restrictions as to the time, place and manner. If the coastal owner is not willing to allow public use of his property he can enforce trespass laws. The amendments affecting coastal property reflect the constitutional right of the public to use State tidelands. For all other property, the bill provides that no future use by the public generally of such property will create any legal threat to the owner's title.

The bill will clarify the State Supreme Court's Gion-Dietz decisions, which held that public use of private land could lead to an "implied dedication" if the owner did not make adequate efforts to prevent such use and the use occurred without his specific consent for a period of five years.

The following organizations support the bill:

Agricultural Council of California
California Cattlemens Association
California Chamber of Commerce
California Christmas Tree Association
California Farm Bureau Federation
California Forest Protective Association
California Irrigation Districts Association
California Land Surveyors Association
California Land Title Association
California Railroad Association
California Redwood Association
California Rifle and Pistol Association
California State Automobile Association
California Wildlife Federation
County Supervisors Association
El Dorado County Agriculture Committee
Kimberly-Clark Corporation
League of California Cities
Marin Property Owners Association
Mariposa City Board of Supervisors
Mountain Counties Water Resources Association
Northern California Section of the Society of
American Foresters
Redding Chamber of Commerce
San Luis Obispo County Cowbells
Shasta County Board of Supervisors
Sierra Cascade Logging Conference
Southern California Rock Products Association
Sportsmens Committee on Political Education
State Board of Forestry
State of California Fish and Game Commission
Tehama County Board of Supervisors
Western Wood Products Association

The Sierra Club was opposed to the bill as it passed the Senate; however, as finally amended they are in support.

The bill was heard and approved by the Senate Natural Resources and Wildlife Committee and the Assembly Planning and Land Use Committee. It passed the Senate 27-2, the Assembly 63-0, and the conference committee report was concurred in by 25-0 and 55-0.

I respectfully urge that you sign SB 504 into law. It is in our opinion an extremely important bill, vital to both the landowner and land-user.

Yours sincerely,



ROBERT J. LAGOMARSINO

RJL/mc

cc: Larry Kiml

(800) 888 1017

LEGISLATIVE INTENT SERVICE





No. 71-3

March 16, 1971

PROPERTY RIGHTS - THREAT OF IMPLIED DEDICATION

The Issue:

Senate Bill 504 (introduced by Senator Robert J. Lagomarsino and Senators Behr, Collier, Cologne, Coombs, Dills, Marler, Nejedly, Schrade, Way and Zenovich, and Assemblymen MacDonald, Schabarum and Townsend on March 9, 1971) declares state policy as encouraging landowners to allow public recreational use and prevents involuntary losses of property rights from public uses that may occur after the enactment date of measure.

Chamber of
Commerce
Position:

This measure is sponsored by the Chamber in cooperation with a number of statewide and regional agricultural, forest and other resources organizations representing landowners and recreationists.

Background:

The State Supreme Court's February 19, 1970, decisions in the Gion and Dietz cases substantially extended the potential application of the common law rule of implied dedication. The Court said that owners of property must make an adequate effort to prevent unlicensed public use or after a period of five years of such use the public, without having asked or received permission, would obtain a vested right to make such use permanent. The Court also said that the right, once gained, could not be subsequently revoked by the owner. The Court's decision was not confined to a specific right-of-way but to the use of the land generally. Prior to the Court's decision the common law rule was generally believed to apply to specific rights-of-way and to cases where a finding could be made that an owner of the land at some point in time did intend to permanently dedicate through implication. Cases now on file, under the new interpretation of the doctrine, primarily involve ocean beach properties which were used by the public in past years. Some of these cases were prompted by owners seeking to terminate public use. In others a contest is involved over market value of the property with public agencies contending that the value was reduced because the title had been impaired through a vested public right of use.

The impact of the Court's ruling is now becoming apparent to landowners who are being forced to post and enforce trespass laws or to otherwise confine public use through recordation of consent to use or through permit systems. In the process many millions of acres of California land will be closed to the general public and owners will be faced with substantial costs in policing their lands against unauthorized public uses.

The common law rule of implied dedication was used extensively years ago in California to develop roads in the absence of adequate surveys, property descriptions, etc. It is not now commonly u

Clear title to many existing public rights-of-way, developed in the past without formal acquisition, may require adjudication. However, no public official can justify the expenditure of public funds for a new road or any other new project when a formal easement or fee title has not been obtained to the land.

A number of other alternatives were explored before S.B. 504 was drafted in the effort to protect landowners from "implied dedication" without requiring fencing of lands and enforcement of trespass laws. Consideration was given to changing the recordation act (Civil Code Section 813). This statutory procedure permits an owner to formally record consent to use of his property. It is not possible for an owner to adequately describe all possible public uses or to protect himself against "implied dedication" of lands adjacent to those for which consent to public use has been recorded. Furthermore, owners who record consent are still faced with the necessity of enforcing any limitations on public use to make sure that no uses occur which are not authorized. Similar problems were encountered with trying to strengthen Section 1008 of the Civil Code which provides a posting procedure to avoid loss of rights by prescription. Either section would have to be amended to include a prohibition against dedication through permissive public use along the lines of this proposal to fully protect the rights of an owner.

The use of permit systems or posting of lands to require permits by any member of the public will effectively prevent a great many outdoor recreational opportunities. The recreationist may arrive at his destination during a weekend or at other times when no one is available to issue a permit or the office may be located many miles away. Under the permit system the owner must still control public use to assure that everyone has a permit and that no unlicensed public use is occurring which may lead to a dedication.

Arguments For:

1. The measure will not interfere with any rights that may have already been vested in the public through past years of public use, even though such rights have not yet been adjudicated.
2. It will serve to keep private lands open to the public, if the owner desires, without risking his property rights.
3. Closure of private lands will shift recreational use to state parks and other tax subsidized government lands, substantially increasing overcrowding, operation and maintenance costs and pressures for removal of more land from the tax base.
4. The common law rule of "implied dedication" is obsolete and inequitable as a means of establishing public rights in private property through future uses. Continuance of the rule will cloud property titles, raise questions as to public liability, assessed value, tax exemption and responsibility for maintaining property.
5. S.B. 504 does not affect rights which have been, or may be, acquired by prescription or adverse possession.

6. The measure does not affect sections of the Constitution, Fish and Game Code or Business and Professions Code providing public rights of access to the ocean or public waters.

Arguments
Against:

1. If an owner can't police his property he shouldn't have protection against dedication.
2. Development of property will be prevented through dedication by future public uses.
3. Complete revocation of the common law rule of "implied dedication" as to future uses is a drastic measure and may work against the interests of local governments.
4. The public has an interest in all lands and no owner should have more than "custodial" rights and any public use that develops is therefore in the public interest.

Prepared By: Natural and Water Resources Departments

For additional information: Larry Kiml, Director
Natural & Water Resources Depts.
California Chamber of Commerce
455 Capitol Mall, Suite 300
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Legislative Counsel of California

GEORGE H. MURPHY

Sacramento, California

April 15, 1971

Honorable Paul Priolo
Assembly Chamber

Permissive Use of Land - #6888

Dear Mr. Priolo:


Pursuant to your request we have prepared the enclosed draft of a bill relating to permissive use of private land.

Among other things, the bill would amend Section 813 of the Civil Code to provide that specified notice of consent to use land would be conclusive evidence that subsequent use of the land for any recreational purpose reasonably foreseeable by the holder of the land is permissive and with consent.

In this regard, in the absence of any definition, a question could be raised as to scope of the meaning to be attributed to such "recreational purpose".

Very truly yours,

George H. Murphy
Legislative Counsel

By 
James L. Ashford
Deputy Legislative Counsel

JLA:cb

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DEPUTIES

PROPOSED EVIDENCE CODE SECTION 670

"It shall be presumed that the use by the public of unenclosed privately-owned lands which have not been posted with "no trespassing" signs, for lawful purposes, without objection or interference by the owner or the person in lawful possession thereof, is permissive and with the consent of the owner or the person in lawful possession. This presumption shall affect the burden of proof."

Introduced by Senators Lagomarsino, Behr, Collier, Cologne, Coombs, Dills, Marler, Nejedly, Schrade, Way, and Zenovitch
(Coauthors: Assemblymen MacDonald, Schabarum, and Townsend)

March 9, 1971

REFERRED TO COMMITTEE ON NATURAL RESOURCES AND WILDLIFE

An act to add Section 1009 to the Civil Code, relating to dedication of lands, declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 504, as introduced, Lagomarsino (N.R. & W.). Dedication of lands.

Adds Sec. 1009, Civ.C.

Declares public policy favoring public use of private lands for recreational purposes without impairing rights of landowners.

Prohibits any use after effective date of act from conferring a vested right in public to continue such use permanently in absence of express written irrevocable offer by owner of property accepted by specified public agency.

To take effect immediately, urgency statute.

Vote—3; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1009 is added to the Civil Code, to
2 read:

3 1009. (a) The Legislature finds that:

4 (1) It is in the best interests of the state to encourage owners
5 of private real property to continue to make their lands avail-
6 able for public recreational use to supplement opportunities
7 available on tax-supported publicly owned facilities.

8 (2) Owners of private real property are confronted with the
9 threat of loss of rights in their property if they allow or
10 continue to allow members of the public to use, enjoy or pass
11 over their property for recreational purposes.

12 (3) The stability and marketability of record titles is
13 clouded by such public use, thereby compelling the owner to
14 exclude the public from his property.

1 (b) Regardless of whether a private owner of real property
2 has recorded a notice of consent to use of any particular prop-
3 erty pursuant to Section 813 of the Civil Code or has posted
4 signs on such property pursuant to Section 1008 of the Civil
5 Code, no use of such property by the public after the effective
6 date of this section shall ever ripen to confer upon the public
7 or any governmental body or unit a vested right to continue
8 to make such use permanently, in the absence of an express
9 written irrevocable offer of dedication of such property to
10 such use, made by the owner thereof in the manner prescribed
11 in subdivision (c) of this section, which has been accepted by
12 the county, city, or other public body to which the offer of
13 dedication was made, in the manner set forth in subdivi-
14 sion (c).

15 (c) In addition to any procedure authorized by law and
16 not prohibited by this section, an irrevocable offer of dedica-
17 tion may be made in the manner prescribed in Section 7050 of
18 the Government Code to any county, city, or other public
19 body, and may be accepted or terminated, in the manner
20 prescribed in that section, by the county board of supervisors
21 in the case of an offer of dedication to a county, by the city
22 council in the case of an offer of dedication to a city, or by
23 the governing board of any other public body in the case
24 of an offer of dedication to such body.

25 SEC. 2. This act shall not be construed to amend or affect
26 the provisions of Sections 11610.5 and 11610.7 of the Business
27 and Professions Code or Section 5943 of the Fish and Game
28 Code nor shall it diminish any public rights of access to
29 navigable waters conferred by Section 2 of Article XV of the
30 California Constitution, nor shall this act be construed to
31 affect, diminish or extinguish any right or rights vested as
32 of the effective date hereof in the public or any governmental
33 body or ~~unit~~ by reason of express or implied dedication, or
34 otherwise.

35 SEC. 3. This act is an urgency statute necessary for the
36 immediate preservation of the public peace, health or safety
37 within the meaning of Article IV of the Constitution and shall
38 go into immediate effect. The facts constituting such necessity
39 are:

40 Large areas of privately owned property now open to public
41 use may be closed in the forthcoming recreational season unless
42 owners are assured by this act that they will not lose property
43 rights through future public use.

Introduced by Senators Lagomarsino, Behr, Collier, Cologne, Coombs, Dills, Marler, Nejedly, Schrade, Way, and Zenovich
(Coauthors: Assemblymen MacDonald, Schabarum, and Townsend)

March 9, 1971

REFERRED TO COMMITTEE ON NATURAL RESOURCES AND WILDLIFE

An act to add Section 1009 to the Civil Code, relating to dedication of lands, declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 504, as amended, Lagomarsino (N.R. & W.). Dedication of lands.

Adds Sec. 1009, Civ.C.

Declares public policy favoring public use of private lands for recreational purposes without impairing rights of landowners.

Prohibits any use after effective date of act from conferring a vested right in public to continue such use permanently in absence of express written irrevocable offer by owner of property accepted by specified public agency.

To take effect immediately, urgency statute.

Vote—§; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1009 is added to the Civil Code, to
- 2 read:
- 3 1009. (a) The Legislature finds that:
- 4 (1) It is in the best interests of the state to encourage owners
- 5 of private real property to continue to make their lands avail-
- 6 able for public recreational use to supplement opportunities
- 7 available on tax-supported publicly owned facilities.
- 8 (2) Owners of private real property are confronted with the
- 9 threat of loss of rights in their property if they allow or
- 10 continue to allow members of the public to use, enjoy or pass
- 11 over their property for recreational purposes.
- 12 (3) The stability and marketability of record titles is
- 13 clouded by such public use, thereby compelling the owner to
- 14 exclude the public from his property.

1 (b) Regardless of whether a private owner of real property
2 has recorded a notice of consent to use of any particular prop-
3 erty pursuant to Section 813 of the Civil Code or has posted
4 signs on such property pursuant to Section 1008 of the Civil
5 Code, no use of such property by the public after the effective
6 date of this section shall ever ripen to confer upon the public
7 or any governmental body or unit a vested right to continue
8 to make such use permanently, in the absence of an express
9 written irrevocable offer of dedication of such property to
10 such use, made by the owner thereof in the manner prescribed
11 in subdivision (c) of this section, which has been accepted by
12 the county, city, or other public body to which the offer of
13 dedication was made, in the manner set forth in subdivi-
14 sion (c).

15 (c) In addition to any procedure authorized by law and
16 not prohibited by this section, an irrevocable offer of dedica-
17 tion may be made in the manner prescribed in Section 7050 of
18 the Government Code to any county, city, or other public
19 body, and may be accepted or terminated, in the manner
20 prescribed in that section, by the county board of supervisors
21 in the case of an offer of dedication to a county, by the city
22 council in the case of an offer of dedication to a city, or by
23 the governing board of any other public body in the case
24 of an offer of dedication to such body.

25 SEC. 2. This act shall not be construed to amend or affect
26 the provisions of Sections 11610.5 and 11610.7 of the Business
27 and Professions Code or Section 5943 of the Fish and Game
28 Code nor shall it diminish any public rights of access to
29 navigable waters conferred by Section 2 of Article XV of the
30 California Constitution, nor shall this act be construed to
31 affect, diminish or extinguish any right or rights vested as
32 of the effective date hereof in the public or any governmental
33 body or unit by reason of express or implied dedication, or
34 otherwise.

35 SEC. 3. This act is an urgency statute necessary for the
36 immediate preservation of the public peace, health or safety
37 within the meaning of Article IV of the Constitution and shall
38 go into immediate effect. The facts constituting such necessity
39 are:

40 Large areas of privately owned property now open to public
41 use may be closed in the forthcoming recreational season unless
42 owners are assured by this act that they will not lose property
43 rights through future public use.

AMENDED IN ASSEMBLY JUNE 10, 1971
AMENDED IN SENATE MAY 4, 1971

SENATE BILL No. 504

Introduced by Senators Lagomarsino, Behr, Collier, Cologne, Coombs,
Dills, Marler, Nejedly, Schrade, Way, and Zenovich
(Coauthors: Assemblymen MacDonald, Schabarum, and Townsend)

March 9, 1971

REFERRED TO COMMITTEE ON NATURAL RESOURCES AND WILDLIFE

*An act to add Section 1009 to the Civil Code, relating to
dedication of lands, declaring the urgency thereof, to take
effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 504, as amended, Lagomarsino (N.R. & W.). Dedication of
lands.

Adds Sec. 1009, Civ. C.

Declares public policy favoring public use of private lands for rec-
reational purposes without impairing rights of landowners.

Prohibits any use after effective date of act from conferring a vested
right in public with specified exception for a public entity that makes
visible improvement on such property to continue such use permanently
in absence of express written irrevocable offer by owner of property
accepted by specified public agency.

To take effect immediately, urgency statute.

Vote—§; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1009 is added to the Civil Code, to
- 2 read:
- 3 1009. (a) The Legislature finds that:
- 4 (1) It is in the best interests of the state to encourage owners
- 5 of private real property to continue to make their lands avail-
- 6 able for public recreational use to supplement opportunities
- 7 available on tax-supported publicly owned facilities.
- 8 (2) Owners of private real property are confronted with the
- 9 threat of loss of rights in their property if they allow or
- 10 continue to allow members of the public to use, enjoy or pass
- 11 over their property for recreational purposes.

1 (3) The stability and marketability of record titles is
2 clouded by such public use, thereby compelling the owner to
3 exclude the public from his property.

4 (b) Regardless of whether a private owner of real property
5 has recorded a notice of consent to use of any particular prop-
6 erty pursuant to Section 813 of the Civil Code or has posted
7 signs on such property pursuant to Section 1008 of the Civil
8 Code, *except as otherwise provided in subdivision (d)*, no use
9 of such property by the public after the effective date of this
10 section shall ever ripen to confer upon the public or any gov-
11 ernmental body or unit a vested right to continue to make such
12 use permanently, in the absence of an express written irrev-
13 ocaable offer of dedication of such property to such use, made
14 by the owner thereof in the manner prescribed in subdivision
15 (c) of this section, which has been accepted by the county, city,
16 or other public body to which the offer of dedication was made,
17 in the manner set forth in subdivision (c).

18 (c) In addition to any procedure authorized by law and
19 not prohibited by this section, an irrevocable offer of dedica-
20 tion may be made in the manner prescribed in Section 7050 of
21 the Government Code to any county, city, or other public
22 body, and may be accepted or terminated, in the manner
23 prescribed in that section, by the county board of supervisors
24 in the case of an offer of dedication to a county, by the city
25 council in the case of an offer of dedication to a city, or by
26 the governing board of any other public body in the case
27 of an offer of dedication to such body.

28 (d) *Where a governmental entity is using private lands by*
29 *an expenditure of public funds on visible improvements on or*
30 *across such lands in such a manner so that the owner knows or*
31 *should know that the public is making such use of his land,*
32 *such use, including any public use reasonably related to the*
33 *purposes of such improvement, in the absence of either express*
34 *permission by the owner to continue such use or the taking by*
35 *the owner of reasonable steps to enjoin, remove or prohibit such*
36 *use, shall after five years ripen to confer upon the govern-*
37 *mental entity a vested right to continue such use.*

38 Sec. 2. This act shall not be construed to amend or affect
39 the provisions of Sections 11610.5 and 11610.7 of the Business
40 and Professions Code or Section 5943 of the Fish and Game
41 Code nor shall it diminish any public rights of access to
42 navigable waters conferred by Section 2 of Article XV of the
43 California Constitution, nor shall this act be construed to
44 affect, diminish or extinguish any right or rights vested as
45 of the effective date hereof by reason of express or implied
46 dedication, or otherwise.

47 Sec. 3. This act is an urgency statute necessary for the
48 immediate preservation of the public peace, health or safety
49 within the meaning of Article IV of the Constitution and shall

1 go into immediate effect. The facts constituting such necessity
2 are:

- 3 Large areas of privately owned property now open to public
- 4 use may be closed in the forthcoming recreational season unless
- 5 owners are assured by this act that they will not lose property
- 6 rights through future public use.

AMENDED IN ASSEMBLY JULY 22, 1971
AMENDED IN ASSEMBLY JUNE 10, 1971
AMENDED IN SENATE MAY 4, 1971

SENATE BILL

No. 504

Introduced by Senators Lagomarsino, Behr, Collier, Cologne, Coombs,
Dills, Marler, Nejedly, Schrade, Way, and Zenovich
(Coauthors: Assemblymen MacDonald, Schabarum, and Townsend
Townsend, Priolo, and Chappie)

March 9, 1971

REFERRED TO COMMITTEE ON NATURAL RESOURCES AND WILDLIFE

An act to ~~add~~ ~~Sections~~ ~~6009~~ to AMEND SECTION 813 OF,
AND TO ADD SECTION 1009 TO, the Civil Code, relating
to dedication of lands, declaring the urgency thereof, to take
effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 504, as amended, Lagomarsino (N.R. & W.). Dedication of
lands.

Amends Sec. 813, adds Sec. 1009, Civ.C.

Makes specified notice of consent to public use of private lands
conclusive evidence that subsequent use for any purpose, except as
specified, is permissive and with consent in any judicial proceeding as
specified. Declares that recording of notice of nonconsent to use of
land shall preclude implied dedication of such land to public use. Au-
thorizes notice to be conditioned on specified restrictions and provides
that violation of such restrictions will not give rise to implied dedica-
tion.

Declares public policy favoring public use of private lands for re-
creational purposes without impairing rights of landowners.

Prohibits any use of private land, except specified ocean frontage
land, after effective date of act from conferring a vested right in public
with specified exception for a public entity that makes visible improve-
ment on such property to continue such use permanently in absence
of express written irrevocable offer by owner of property accepted by
specified public agency. With regard to specified ocean frontage prop-
erty, makes use by public inadmissible to prove implied dedication if
specified actions are taken by owner.

To take effect immediately, urgency statute.

Vote—3; Appropriation—No; Fiscal Committee—No.

Corrected 7-28-71

The people of the State of California do enact as follows:

SECTION 1. Section 1009 is added to the Civil Code, to
SECTION 1. Section 813 of the Civil Code is amended to
read:

813. The holder of record title to land may record in the office of the recorder of any county in which any part of the land is situated, a notice of consent to the use of his land, or any portion thereof, for the purpose described in the notice. The recorded notice of consent is evidence that subsequent use of the land for such purpose is permissive and with consent. The notice of consent may be revoked by the holder of record title by recording a notice of revocation in the office of the recorder wherein the notice of consent is recorded.

In the event of use by other than the general public, any such notices, to be effective, shall also be served by registered mail on the user.

The recording of a notice of consent shall not be deemed to affect rights vested at the time of recording. A description of said land and a notice reading substantially as follows: "The right of the public or any person to make any use whatsoever of the above described land or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to control, of owner: Section 813, Civil Code."

The recorded notice is conclusive evidence that subsequent use of the land by the public or any user for any purpose (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is permissive and with consent in any judicial proceeding involving the issue as to whether all or any portion of such land has been dedicated to public use or whether any user has a prescriptive right in such land or any portion thereof. The notice may be revoked by the holder of record title by recording a notice of revocation in the office of the recorder wherein the notice is recorded. After recording a notice pursuant to this section, and prior to any revocation thereof, the owner shall not prevent any public use appropriate thereto by physical obstruction, notice or otherwise.

In the event of use by other than the general public, any such notices, to be effective, shall also be served by registered mail on the user.

The recording of a notice pursuant to this section shall not be deemed to affect rights vested at the time of recording.

The permission for public use of real property provided for in such a recorded notice may be conditioned upon reasonable restrictions on the time, place, and manner of such public use, and no use in violation of such restrictions shall be considered public use for purposes of a finding of implied dedication.

SEC. 2. Section 1009 is added to the Civil Code, to read:
1009. (a) The Legislature finds that:

(1) It is in the best interests of the state to encourage owners of private real property to continue to make their lands available for public recreational use to supplement opportunities available on tax-supported publicly owned facilities.

(2) Owners of private real property are confronted with the threat of loss of rights in their property if they allow or continue to allow members of the public to use, enjoy or pass over their property for recreational purposes.

(3) The stability and marketability of record titles is clouded by such public use, thereby compelling the owner to exclude the public from his property.

(b) Regardless of whether or not a private owner of real property has recorded a notice of consent to use of any particular property pursuant to Section 813 of the Civil Code or has posted signs on such property pursuant to Section 1008 of the Civil Code, except as otherwise provided in subdivision (d), no use of such property by the public after the effective date of this section shall ever ripen to confer upon the public or any governmental body or unit a vested right to continue to make such use permanently, in the absence of an express written irrevocable offer of dedication of such property to such use, made by the owner thereof in the manner prescribed in subdivision (c) of this section, which has been accepted by the county, city, or other public body to which the offer of dedication was made, in the manner set forth in subdivision (c).

(c) In addition to any procedure authorized by law and not prohibited by this section, an irrevocable offer of dedication may be made in the manner prescribed in Section 7050 of the Government Code to any county, city, or other public body, and may be accepted or terminated, in the manner prescribed in that section, by the county board of supervisors in the case of an offer of dedication to a county, by the city council in the case of an offer of dedication to a city, or by the governing board of any other public body in the case of an offer of dedication to such body.

(d) Where a governmental entity is using private lands by an expenditure of public funds on visible improvements on or across such lands or on the cleaning or maintenance related to the public use of such lands in such a manner so that the owner knows or should know that the public is making such use of his land, such use, including any public use reasonably related to the purposes of such improvement, in the absence of either express permission by the owner to continue such use or the taking by the owner of reasonable steps to enjoin, remove or prohibit such use, shall after five years ripen to confer upon the governmental entity a vested right to continue such use.

(e) Subdivision (b) shall not apply to any coastal property which lies within 1,000 yards inland of the mean high tide line of the Pacific Ocean, and harbors, estuaries, bays and

1 inlets thereof, but not including any property lying inland
2 of the Carquinez Straits bridge, or between the mean high
3 tide line and the nearest public road or highway, whichever
4 distance is less.

5 (f) No use, subsequent to the effective date of this section,
6 by the public of property described in subdivision (e) shall
7 constitute evidence or be admissible as evidence that the pub-
8 lic or any governmental body or unit has any right in such
9 property by implied dedication if the owner does any of the
10 following actions:

11 (1) Posts signs, as provided in Section 1008, and renews
12 the same, if they are removed, at least once a year, or pub-
13 lishes annually, pursuant to Section 6066 of the Government
14 Code, in a newspaper of general circulation in the county or
15 counties in which the land is located, a statement describing
16 the property and reading substantially as follows: "Right to
17 pass by permission and subject to control of owner: Section
18 1008, Civil Code."

19 (2) Records a notice as provided in Section 813.

20 (3) Enters into a written agreement with any federal, state,
21 or local agency providing for the public use of such land.

22 After taking any of the actions set forth in paragraphs (1),
23 (2), or (3), and during the time such action is effective, the
24 owner shall not prevent any public use which is appropriate
25 under the permission granted pursuant to such paragraphs
26 by physical obstruction, notice, or otherwise.

27 (g) The permission for public use of real property referred
28 to in subdivision (f) may be conditioned upon reasonable re-
29 strictions on the time, place, and manner of such public use,
30 and no use in violation of such restrictions shall be considered
31 public use for purposes of a finding of implied dedication.

32 SEC. 2. This act shall not be construed to amend or affect
33 the provisions of Sections 11610.5 and 11610.7 of the Business
34 and Professions Code or Section 5943 of the Fish and Game
35 Code nor shall it diminish any public rights of access to
36 navigable waters conferred by Section 2 of Article XV of the
37 California Constitution nor shall it diminish any public rights
38 to fish from or upon the public lands of the state or in the
39 waters thereof conferred by Section 25 of Article 1 of the
40 California Constitution, nor shall this act be construed to
41 affect, diminish or extinguish any right or rights vested as
42 of the effective date hereof by reason of express or implied
43 dedication, or otherwise.

44 SEC. 3. This act is an urgency statute necessary for the
45 immediate preservation of the public peace, health or safety
46 within the meaning of Article IV of the Constitution and shall
47 go into immediate effect. The facts constituting such necessity
48 are:

49 Large areas of privately owned property now open to public
50 use may be closed in the forthcoming recreational season unless
51 owners are assured by this act that they will not lose property
52 rights through future public use.

AMENDED IN ASSEMBLY JULY 28, 1971
AMENDED IN ASSEMBLY JULY 22, 1971
AMENDED IN ASSEMBLY JUNE 10, 1971
AMENDED IN SENATE MAY 4, 1971

SENATE BILL

No. 504

Introduced by Senators Lagomarsino, Behr, Collier, Cologne, Coombs,
Dills, Marler, Nejedly, Schrade, Way, and Zenovich
(Coauthors: Assemblymen MacDonald, Schabarum, Townsend,
Priolo, and Chappie)

March 9, 1971

REFERRED TO COMMITTEE ON NATURAL RESOURCES AND WILDLIFE

An act to amend Section 813 of, and to add Section 1009 to, the Civil Code, relating to dedication of lands, declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 504, as amended, Lagomarsino (N.R. & W.). Dedication of lands.

Amends Sec. 813, adds Sec. 1009, Civ.C.

Makes specified notice of consent to public use of private lands conclusive evidence that subsequent use for any purpose, except as specified, is permissive and with consent in any judicial proceeding as specified. Authorizes notice to be conditioned on specified restrictions and provides that violation of such restrictions will not give rise to implied dedication.

Declares public policy favoring public use of private lands for recreational purposes without impairing rights of landowners.

Prohibits any use of private land, except specified ocean frontage land, after effective date of act from conferring a vested right in public with specified exception for a public entity that makes visible improvement on such property to continue such use permanently in absence of express written irrevocable offer by owner of property accepted by specified public agency. With regard to specified ocean frontage property, makes use by public inadmissible to prove implied dedication if specified actions are taken by owner.

To take effect immediately, urgency statute.

Vote—3; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

1 SECTION 1. Section 813 of the Civil Code is amended to
2 read:
3 813. The holder of record title to land may record in the
4 office of the recorder of any county in which any part of the
5 land is situated, a description of said land and a notice read-
6 ing substantially as follows: "The right of the public or any
7 person to make any use whatsoever of the above described
8 land or any portion thereof (other than any use expressly
9 allowed by a written or recorded map, agreement, deed or
10 dedication) is by permission, and subject to control, of owner:
11 Section 813, Civil Code."

12 The recorded notice is conclusive evidence that subsequent
13 use of the land *during the time such notice is in effect* by the
14 public or any user for any purpose (other than any use ex-
15 pressly allowed by a written or recorded map, agreement, deed
16 or dedication) is permissive and with consent in any judicial
17 proceeding involving the issue as to whether all or any portion
18 of such land has been dedicated to public use or whether any
19 user has a prescriptive right in such land or any portion
20 thereof. The notice may be revoked by the holder of record
21 title by recording a notice of revocation in the office of the
22 recorder wherein the notice is recorded. After recording a
23 notice pursuant to this section, and prior to any revocation
24 thereof, the owner shall not prevent any public use appropri-
25 ate thereto by physical obstruction, notice or otherwise.

26 In the event of use by other than the general public, any
27 such notices, to be effective, shall also be served by registered
28 mail on the user.

29 The recording of a notice pursuant to this section shall not
30 be deemed to affect rights vested at the time of recording.

31 The permission for public use of real property provided for
32 in such a recorded notice may be conditioned upon reasonable
33 restrictions on the time, place, and manner of such public
34 use, and no use in violation of such restrictions shall be con-
35 sidered public use for purposes of a finding of implied dedica-
36 tion.

37 SEC. 2. Section 1009 is added to the Civil Code, to read:

38 1009. (a) The Legislature finds that:

39 (1) It is in the best interests of the state to encourage owners
40 of private real property to continue to make their lands avail-
41 able for public recreational use to supplement opportunities
42 available on tax-supported publicly owned facilities.

43 (2) Owners of private real property are confronted with the
44 threat of loss of rights in their property if they allow or
45 continue to allow members of the public to use, enjoy or pass
46 over their property for recreational purposes.

47 (3) The stability and marketability of record titles is
48 clouded by such public use, thereby compelling the owner to
49 exclude the public from his property.

1 (b) Regardless of whether or not a private owner of real
2 property has recorded a notice of consent to use of any particu-
3 lar property pursuant to Section 813 of the Civil Code or has
4 posted signs on such property pursuant to Section 1008 of the
5 Civil Code, except as otherwise provided in subdivision (d), no
6 use of such property by the public after the effective date of
7 this section shall ever ripen to confer upon the public or any
8 governmental body or unit a vested right to continue to make
9 such use permanently, in the absence of an express written ir-
10 revocable offer of dedication of such property to such use, made
11 by the owner thereof in the manner prescribed in subdivision
12 (c) of this section, which has been accepted by the county, city,
13 or other public-body to which the offer of dedication was made,
14 in the manner set forth in subdivision (e).

15 (c) In addition to any procedure authorized by law and
16 not prohibited by this section, an irrevocable offer of dedica-
17 tion may be made in the manner prescribed in Section 7050 of
18 the Government Code to any county, city, or other public
19 body, and may be accepted or terminated, in the manner
20 prescribed in that section, by the county board of supervisors
21 in the case of an offer of dedication to a county, by the city
22 council in the case of an offer of dedication to a city, or by
23 the governing board of any other public body in the case
24 of an offer of dedication to such body.

25 (d) Where a governmental entity is using private lands by
26 an expenditure of public funds on visible improvements on or
27 across such lands or on the cleaning or maintenance related to
28 the public use of such lands in such a manner so that the
29 owner knows or should know that the public is making such
30 use of his land, such use, including any public use reasonably
31 related to the purposes of such improvement, in the absence of
32 either express permission by the owner to continue such use or
33 the taking by the owner of reasonable steps to enjoin, remove
34 or prohibit such use, shall after five years ripen to confer
35 upon the governmental entity a vested right to continue such
36 use.

37 (e) Subdivision (b) shall not apply to any coastal property
38 which lies within 1,000 yards inland of the mean high tide
39 line of the Pacific Ocean, and harbors, estuaries, bays and
40 inlets thereof, but not including any property lying inland
41 of the Carquinez Straits bridge, or between the mean high
42 tide line and the nearest public road or highway, whichever
43 distance is less.

44 (f) No use, subsequent to the effective date of this section,
45 by the public of property described in subdivision (e) shall
46 constitute evidence or be admissible as evidence that the pub-
47 lic or any governmental body or unit has any right in such
48 property by implied dedication if the owner does any of the
49 following actions:

50 (1) Posts signs, as provided in Section 1008, and renews
51 the same, if they are removed, at least once a year, or pub-
52 lishes annually, pursuant to Section 6066 of the Government

1 Code, in a newspaper of general circulation in the county or
 2 counties in which the land is located, a statement describing
 3 the property and reading substantially as follows: "Right to
 4 pass by permission and subject to control of owner: Section
 5 1008, Civil Code."

6 (2) Records a notice as provided in Section 813.

7 (3) Enters into a written agreement with any federal, state,
 8 or local agency providing for the public use of such land.

9 After taking any of the actions set forth in paragraphs (1),
 10 (2), or (3), and during the time such action is effective, the
 11 owner shall not prevent any public use which is appropriate
 12 under the permission granted pursuant to such paragraphs
 13 by physical obstruction, notice or otherwise.

14 (g) The permission for public use of real property referred
 15 to in subdivision (f) may be conditioned upon reasonable re-
 16 strictions on the time, place, and manner of such public use,
 17 and no use in violation of such restrictions shall be considered
 18 public use for purposes of a finding of implied dedication.
 19 See 2

20 SEC. 3. This act shall not be construed to amend or affect
 21 the provisions of Sections 11610.5 and 11610.7 of the Business
 22 and Professions Code or Section 5943 of the Fish and Game
 23 Code nor shall it diminish any public rights of access to
 24 navigable waters conferred by Section 2 of Article XV of the
 25 California Constitution nor shall it diminish any public rights
 26 to fish from or upon the public lands of the state or in the
 27 waters thereof conferred by Section 25 of Article 1 of the
 28 California Constitution, nor shall this act be construed to
 29 affect, diminish or extinguish any right or rights vested as
 30 of the effective date hereof by reason of express or implied
 31 dedication, or otherwise.

32 See 3

33 SEC. 4. This act is an urgency statute necessary for the
 34 immediate preservation of the public peace, health or safety
 35 within the meaning of Article IV of the Constitution and shall
 36 go into immediate effect. The facts constituting such necessity
 37 are:

38 Large areas of privately owned property now open to public
 39 use may be closed in the forthcoming recreational season unless
 40 owners are assured by this act that they will not lose property
 41 rights through future public use.

SENATE ADOPTS CONFERENCE REPORT
SEPTEMBER 23, 1971
ASSEMBLY ADOPTS CONFERENCE REPORT
SEPTEMBER 23, 1971

AMENDED IN ASSEMBLY JULY 28, 1971
AMENDED IN ASSEMBLY JULY 22, 1971
AMENDED IN ASSEMBLY JUNE 10, 1971
AMENDED IN SENATE MAY 4, 1971

SENATE BILL

No. 504

Introduced by Senators Lagomarsino, Behr, Collier, Cologne, Coombs,
Dills, Marler, Nejedly, Schrade, Wax, and Zenovich
(Coauthors: Assemblymen MacDonald, Schabarum, Townsend,
Priolo, and Chappie)

March 9, 1971

REFERRED TO COMMITTEE ON NATURAL RESOURCES AND WILDLIFE

An act to amend Section 813 of, and to add Section 1009 to, the Civil Code, relating to dedication of lands, declaring the urgency thereof to take effect immediately: THE CIVIL CODE, RELATING TO DEDICATION OF LANDS.

LEGISLATIVE COUNSEL'S DIGEST

SB 504, as amended, Lagomarsino (N.R. & W.). Dedication of lands.

Amends Sec. 813, adds Sec. 1009, Civ.C.

Makes specified notice of consent to public use of private lands conclusive evidence that subsequent use for any purpose, except as specified, is permissive and with consent in any judicial proceeding as specified. Authorizes notice to be conditioned on specified restrictions and provides that violation of such restrictions will not give rise to implied dedication.

Declares public policy favoring public use of private lands for recreational purposes without impairing rights of landowners.

Prohibits any use of private land, except specified ocean frontage land, after effective date of act from conferring a vested right in public with specified exception for a public entity that makes visible improvement on such property to continue such use permanently in absence of express written irrevocable offer by owner of property accepted by

specified public agency. With regard to specified ocean frontage property, makes use by public inadmissible to prove implied dedication if specified actions are taken by owner.

To take effect immediately, urgency statute.

Provides that if any provision of act is held invalid by final judgment or decree of an appellate court, entire act, except specified provision, is invalid and that in such event any public use of private land that would otherwise be affected by act between effective date and determination of invalidity is conclusively presumed to be with consent of owner. Makes exception for specified ocean frontage property unless specified actions are taken by owner.

Vote— $\frac{2}{3}$ Majority; Appropriation—No; Fiscal Committee—No.

The people of the State of California do enact as follows:

1 SECTION 1. Section 813 of the Civil Code is amended to
2 read:
3 813. The holder of record title to land may record in the
4 office of the recorder of any county in which any part of the
5 land is situated, a description of said land and a notice read-
6 ing substantially as follows: "The right of the public or any
7 person to make any use whatsoever of the above described
8 land or any portion thereof (other than any use expressly
9 allowed by a written or recorded map, agreement, deed or
10 dedication) is by permission, and subject to control, of owner:
11 Section 813, Civil Code."

12 The recorded notice is conclusive evidence that subsequent
13 use of the land during the time such notice is in effect by the
14 public or any user for any purpose (other than any use ex-
15 pressly allowed by a written or recorded map, agreement, deed
16 or dedication) is permissive and with consent in any judicial
17 proceeding involving the issue as to whether all or any portion
18 of such land has been dedicated to public use or whether any
19 user has a prescriptive right in such land or any portion
20 thereof. The notice may be revoked by the holder of record
21 title by recording a notice of revocation in the office of the
22 recorder wherein the notice is recorded. After recording a
23 notice pursuant to this section, and prior to any revocation
24 thereof, the owner shall not prevent any public use appropri-
25 ate thereto by physical obstruction, notice or otherwise.

26 In the event of use by other than the general public, any
27 such notices, to be effective, shall also be served by registered
28 mail on the user.

29 The recording of a notice pursuant to this section shall not
30 be deemed to affect rights vested at the time of recording.

31 The permission for public use of real property provided for
32 in such a recorded notice may be conditioned upon reasonable
33 restrictions on the time, place, and manner of such public
34 use, and no use in violation of such restrictions shall be con-
35 sidered public use for purposes of a finding of implied dedica-
36 tion.

1 SEC. 2. Section 1009 is added to the Civil Code, to read:
2 1009. (a) The Legislature finds that:

3 (1) It is in the best interests of the state to encourage owners
4 of private real property to continue to make their lands avail-
5 able for public recreational use to supplement opportunities
6 available on tax-supported publicly owned facilities.

7 (2) Owners of private real property are confronted with the
8 threat of loss of rights in their property if they allow or
9 continue to allow members of the public to use, enjoy or pass
10 over their property for recreational purposes.

11 (3) The stability and marketability of record titles is
12 clouded by such public use, thereby compelling the owner to
13 exclude the public from his property.

14 (b) Regardless of whether or not a private owner of real
15 property has recorded a notice of consent to use of any particu-
16 lar property pursuant to Section 813 of the Civil Code or has
17 posted signs on such property pursuant to Section 1008 of the
18 Civil Code, except as otherwise provided in subdivision (d), no
19 use of such property by the public after the effective date of
20 this section shall ever ripen to confer upon the public or any
21 governmental body or unit a vested right to continue to make
22 such use permanently, in the absence of an express written ir-
23 revocable offer of dedication of such property to such use, made
24 by the owner thereof in the manner prescribed in subdivision
25 (c) of this section, which has been accepted by the county, city,
26 or other public body to which the offer of dedication was made,
27 in the manner set forth in subdivision (e).

28 (c) In addition to any procedure authorized by law and
29 not prohibited by this section, an irrevocable offer of dedica-
30 tion may be made in the manner prescribed in Section 7050 of
31 the Government Code to any county, city, or other public
32 body, and may be accepted or terminated, in the manner
33 prescribed in that section, by the county board of supervisors
34 in the case of an offer of dedication to a county, by the city
35 council in the case of an offer of dedication to a city, or by
36 the governing board of any other public body in the case
37 of an offer of dedication to such body.

38 (d) Where a governmental entity is using private lands by
39 an expenditure of public funds on visible improvements on or
40 across such lands or on the cleaning or maintenance related to
41 the public use of such lands in such a manner so that the
42 owner knows or should know that the public is making such
43 use of his land, such use, including any public use reasonably
44 related to the purposes of such improvement, in the absence of
45 either express permission by the owner to continue such use or
46 the taking by the owner of reasonable steps to enjoin, remove
47 or prohibit such use, shall after five years ripen to confer
48 upon the governmental entity a vested right to continue such
49 use.

50 (e) Subdivision (b) shall not apply to any coastal property
51 which lies within 1,000 yards inland of the mean high tide
52 line of the Pacific Ocean, and harbors, estuaries, bays and

1 inlets thereof, but not including any property lying inland
2 of the Carquinez Straits bridge, or between the mean high
3 tide line and the nearest public road or highway, whichever
4 distance is less.

5 (f) No use, subsequent to the effective date of this section,
6 by the public of property described in subdivision (e) shall
7 constitute evidence or be admissible as evidence that the pub-
8 lic or any governmental body or unit has any right in such
9 property by implied dedication if the owner does any of the
10 following actions:

11 (1) Posts signs, as provided in Section 1008, and renews
12 the same, if they are removed, at least once a year, or pub-
13 lishes annually, pursuant to Section 6066 of the Government
14 Code, in a newspaper of general circulation in the county or
15 counties in which the land is located, a statement describing
16 the property and reading substantially as follows: "Right to
17 pass by permission and subject to control of owner: Section
18 1008, Civil Code."

19 (2) Records a notice as provided in Section 813.

20 (3) Enters into a written agreement with any federal, state,
21 or local agency providing for the public use of such land.

22 After taking any of the actions set forth in paragraphs
23 paragraph (1), (2), or (3), and during the time such action
24 is effective, the owner shall not prevent any public use which
25 is appropriate under the permission granted pursuant to such
26 paragraphs by physical obstruction, notice, or otherwise.

27 (g) The permission for public use of real property referred
28 to in subdivision (f) may be conditioned upon reasonable re-
29 strictions on the time, place, and manner of such public use,
30 and no use in violation of such restrictions shall be considered
31 public use for purposes of a finding of implied dedication.

32 Sec. 3. This act shall not be construed to amend or affect
33 the provisions of Sections 11610.5 and 11610.7 of the Business
34 and Professions Code or Section 5943 of the Fish and Game
35 Code nor shall it diminish any public rights of access to
36 navigable waters conferred by Section 2 of Article XV of the
37 California Constitution nor shall it diminish any public rights
38 to fish from or upon the public lands of the state or in the
39 waters thereof conferred by Section 25 of Article I of the
40 California Constitution, nor shall this act be construed
41 to affect, diminish or extinguish any right or rights vested as
42 of the effective date hereof by reason of express or implied
43 dedication, or otherwise.

44 Sec. 4. This act is an emergency statute necessary for the
45 immediate preservation of the public peace, health or safety
46 within the meaning of Article IV of the Constitution and shall
47 go into immediate effect. The facts constituting such necessity
48 are:

49 Large areas of privately owned property now open to public
50 use may be closed in the forthcoming recreational season unless
51 owners are assured by this act that they will not lose property
52 rights through future public use.

1 SEC. 4. In the event any provision of this act is held in-
2 valid by a final judgment or decree of an appellate court of
3 this state or of the United States, this entire act, with the ex-
4 ception of this section shall be invalid and inoperative for any
5 purpose. In such event any use or continued use by the public
6 of privately owned real property that would otherwise be af-
7 fected by this act, after its effective date and prior to the
8 date of such judicial determination, shall be conclusively pre-
9 sumed to be with the permission of the owner of such prop-
10 erty, and such use shall not constitute evidence nor be ad-
11 missible as evidence in any action brought to establish a vested
12 right on behalf of the public or any governmental body or unit
13 to continue to make such use permanently. This section shall
14 not apply to real property described in subdivision (e) of
15 Section 1009 of the Civil Code during such time that the
16 owner has not complied with the provisions of subdivision (f)
17 of that section.

by the board of directors. In the event the articles provide for an indefinite number of directors, unless the articles provide otherwise, such indefinite number may be changed, or a definite number fixed without provision for an indefinite number, by a bylaw duly adopted by the members.

(f) If an existing unincorporated association is being incorporated, the name of the existing unincorporated association.

Sec. 2. Section 9400 of the Corporations Code is amended to read:

9400. Bylaws may be adopted, amended or repealed by any of the following:

(a) By the written consent of members entitled to exercise a majority of the voting power, or by the vote of a majority of a quorum at a meeting of members duly called for the purpose according to the articles or bylaws.

(b) Except as provided in subdivision (c), by the board of directors, subject to the power of the members to change or repeal the bylaws.

(c) A bylaw or bylaw amendment fixing or changing the authorized number of directors may be adopted only by the members and may not be adopted by the board of directors except where the articles or bylaws provide for an indefinite number of directors pursuant to subdivision (e) of Section 9300.

However, the articles or bylaws may require the vote or written consent of members entitled to exercise a greater fraction or percentage of the voting power for the amendment or repeal of bylaws generally, or of particular bylaws, or for the adoption of new bylaws than would otherwise be required under this section. The articles or a bylaw adopted by the members may limit or restrict the power of the directors to adopt, amend, or repeal bylaws, or may deprive them of the power.

Sec. 3. Chapter 5 (commencing with Section 9700) is added to Part 1 of Division 2 of Title 1 of the Corporations Code, to read:

CHAPTER 5. MERGER AND CONSOLIDATION

9700. The provisions of the General Corporation Law contained in Article 1 (commencing with Section 4100) of Chapter 3 of Part 8 of Division 1 of this title, apply to mergers and consolidations of corporations formed under this part, except as to matters specifically otherwise provided for in this chapter.

9701. An agreement to merge or consolidate shall be approved by the members of each corporation. Where the members have equal voting rights, the agreement shall be approved by a resolution adopted by the vote of a majority of the members or be approved by the written consent of two-thirds of the members; or where the members have unequal voting rights,

the agreement shall be approved by a resolution adopted by the vote of members entitled to exercise a majority of the voting power or be approved by the written consent of members entitled to exercise two-thirds of the voting power. This section shall be applicable regardless of any limitations or restrictions on the voting power of any class or classes of membership.

9702. Where the members act by vote, such votes shall be cast at a meeting duly called upon notice of the time, place, and purpose thereof, duly given to each member at least 20 days prior to the date of the meeting, except that such notice may be waived as provided in Section 2209. Unless the notice is waived, there shall be mailed with such notice a statement of the general terms of the proposed agreement.

9703. The articles of incorporation may require the vote or written consent of a greater percentage or fraction of the members than would otherwise be required under this chapter, in cases where the members have equal voting rights, or may require the vote or written consent of members entitled to exercise a greater percentage or fraction of the voting power than would otherwise be required under this chapter, in cases where the members have unequal voting rights. In no case may the articles prohibit any merger or consolidation authorized by this chapter or by Chapter 3 (commencing with Section 4100) of Part 8 of Division 1 of this title.

CHAPTER 941

An act to amend Section 813 of, and to add Section 1009 to, the Civil Code, relating to dedication of lands.

[Approved by Governor October 8, 1971. Filed with Secretary of State October 8, 1971.]

The people of the State of California do enact as follows:

SECTION 1. Section 813 of the Civil Code is amended to read:

813. The holder of record title to land may record in the office of the recorder of any county in which any part of the land is situated, a description of said land and a notice reading substantially as follows: "The right of the public or any person to make any use whatsoever of the above described land or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to control, of owner: Section 813, Civil Code."

The recorded notice is conclusive evidence that subsequent use of the land during the time such notice is in effect by the public or any user for any purpose (other than any use expressly allowed by a written or recorded map, agreement, deed

or dedication) is permissive and with consent in any judicial proceeding involving the issue as to whether all or any portion of such land has been dedicated to public use or whether any user has a prescriptive right in such land or any portion thereof. The notice may be revoked by the holder of record title by recording a notice of revocation in the office of the recorder wherein the notice is recorded. After recording a notice pursuant to this section, and prior to any revocation thereof, the owner shall not prevent any public use appropriate thereto by physical obstruction, notice or otherwise.

In the event of use by other than the general public, any such notices, to be effective, shall also be served by registered mail on the user.

The recording of a notice pursuant to this section shall not be deemed to affect rights vested at the time of recording.

The permission for public use of real property provided for in such a recorded notice may be conditioned upon reasonable restrictions on the time, place, and manner of such public use, and no use in violation of such restrictions shall be considered public use for purposes of a finding of implied dedication.

Sec. 2. Section 1009 is added to the Civil Code, to read:

1009. (a) The Legislature finds that:

(1) It is in the best interests of the state to encourage owners of private real property to continue to make their lands available for public recreational use to supplement opportunities available on tax-supported publicly owned facilities.

(2) Owners of private real property are confronted with the threat of loss of rights in their property if they allow or continue to allow members of the public to use, enjoy, or pass over their property for recreational purposes.

(3) The stability and marketability of record titles is clouded by such public use, thereby compelling the owner to exclude the public from his property.

(b) Regardless of whether or not a private owner of real property has recorded a notice of consent to use of any particular property pursuant to Section 813 of the Civil Code or has posted signs on such property pursuant to Section 1008 of the Civil Code, except as otherwise provided in subdivision (d), no use of such property by the public after the effective date of this section shall ever ripen to confer upon the public or any governmental body or unit a vested right to continue to make such use permanently, in the absence of an express written irrevocable offer of dedication of such property to such use, made by the owner thereof in the manner prescribed in subdivision (c) of this section, which has been accepted by the county, city, or other public body to which the offer of dedication was made, in the manner set forth in subdivision (c).

(c) In addition to any procedure authorized by law and not prohibited by this section, an irrevocable offer of dedication may be made in the manner prescribed in Section 7050 of the Government Code to any county, city, or other public

body, and may be accepted or terminated, in the manner prescribed in that section, by the county board of supervisors in the case of an offer of dedication to a county, by the city council in the case of an offer of dedication to a city, or by the governing board of any other public body in the case of an offer of dedication to such body.

(d) Where a governmental entity is using private lands by an expenditure of public funds on visible improvements on or across such lands or on the clearing or maintenance related to the public use of such lands in such a manner so that the owner knows or should know that the public is making such use of his land, such use, including any public use reasonably related to the purposes of such improvement, in the absence of either express permission by the owner to continue such use or the taking by the owner of reasonable steps to enjoin, remove or prohibit such use, shall after five years ripen to confer upon the governmental entity a vested right to continue such use.

(e) Subdivision (b) shall not apply to any coastal property which lies within 1,000 yards inland of the mean high tide line of the Pacific Ocean, and harbors, estuaries, bays and inlets thereof, but not including any property lying inland of the Carquinez Straits bridge, or between the mean high tide line and the nearest public road or highway, whichever distance is less.

(f) No use, subsequent to the effective date of this section, by the public of property described in subdivision (e) shall constitute evidence or be admissible as evidence that the public or any governmental body or unit has any right in such property by implied dedication if the owner does any of the following actions:

(1) Posts signs, as provided in Section 1008, and renews the same, if they are removed, at least once a year, or publishes annually, pursuant to Section 6066 of the Government Code, in a newspaper of general circulation in the county or counties in which the land is located, a statement describing the property and reading substantially as follows: "Right to pass by permission and subject to control of owner: Section 1008, Civil Code."

(2) Records a notice as provided in Section 813.

(3) Enters into a written agreement with any federal, state, or local agency providing for the public use of such land.

After taking any of the actions set forth in paragraph (1), (2), or (3), and during the time such action is effective, the owner shall not prevent any public use which is appropriate under the permission granted pursuant to such paragraphs by physical obstruction, notice, or otherwise.

(g) The permission for public use of real property referred to in subdivision (f) may be conditioned upon reasonable restrictions on the time, place, and manner of such public use, and no use in violation of such restrictions shall be considered public use for purposes of a finding of implied dedication.

SEC. 3. This act shall not be construed to amend or affect the provisions of Sections 11610.5 and 11610.7 of the Business and Professions Code or Section 5943 of the Fish and Game Code nor shall it diminish any public rights of access to navigable waters conferred by Section 2 of Article XV of the California Constitution nor shall it diminish any public rights to fish from or upon the public lands of the state or in the waters thereof conferred by Section 25 of Article I of the California Constitution, nor shall this act be construed to affect, diminish or extinguish any right or rights vested as of the effective date hereof by reason of express or implied dedication, or otherwise.

SEC. 4. In the event any provision of this act is held invalid by a final judgment or decree of an appellate court of this state or of the United States, this entire act, with the exception of this section shall be invalid and inoperative for any purpose. In such event any use or continued use by the public of privately owned real property that would otherwise be affected by this act, after its effective date and prior to the date of such judicial determination, shall be conclusively presumed to be with the permission of the owner of such property, and such use shall not constitute evidence in or be admissible as evidence in any action brought to establish a vested right on behalf of the public or any governmental body or unit to continue to make such use permanently. This section shall not apply to real property described in subdivision (e) of Section 1009 of the Civil Code during such time that the owner has not complied with the provisions of subdivision (f) of that section.

CHAPTER 942

An act to amend Section 39180 of, and to add Sections 39107.5 and 39175.5 to, the Health and Safety Code, relating to air pollution.

(Approved by Governor October 8, 1971. Filed with Secretary of State October 8, 1971.)

The people of the State of California do enact as follows:

SECTION 1. Section 39107.5 is added to the Health and Safety Code, to read:

39107.5. Upon a finding that a device is or can be made available for the control of hydrocarbons, carbon monoxide, or oxides of nitrogen, which device does not meet the standards of Section 39107, the board may, upon a further finding that the device will cause substantial reduction in emission of any one of the three pollutants without significantly increasing the emission of the remaining two, establish appropriate standards with regard to such substantial reduction of emission and certify such device pursuant to Section 39175.5.

SEC. 2. Section 39175.5 is added to the Health and Safety Code, to read:

39175.5. Before certifying a device which meets the emission standards set pursuant to Section 39107.5, the board shall consider all relevant factors, including all of the following:

- (a) Likelihood of a device being certified which meets the standards of Section 39107.
- (b) Expected cost in relationship to each of the following:
 - (1) The amount of reduction of the emission to be gained.
 - (2) The market value of the vehicles on which a device might be certified under Section 39107.

SEC. 3. Section 39180 of the Health and Safety Code is amended to read:

39180. In establishing tests and procedures the board shall adopt standards including, but not limited to, the following:

- (a) An accredited exhaust emission control device shall not cost more than sixty-five dollars (\$65), including the cost of installation. If the board certifies and requires more than one device for a single type of vehicle pursuant to Section 39107.5, the total cost, including installation, of all such devices for such vehicle shall not exceed sixty-five dollars (\$65).

(b) An accredited exhaust emission control device shall not require maintenance more than once each 12,000 miles, and such maintenance shall not cost more than fifteen dollars (\$15), including the cost of parts and labor.

(c) An accredited exhaust control device shall equal or exceed the performance criteria established by the board for devices for new motor vehicles or, in the alternative, have an expected useful life of at least 30,000 miles of operation.

(d) Standards for an accredited fuel system evaporative loss control device shall take into consideration the cost of the device and its installation, its durability, the ease and facility of determining whether the device, when installed on a motor vehicle is properly functioning, and any other factors which, in the opinion of the board, render such a device suitable or unsuitable for the control of motor vehicle air pollution or for the health, safety, and welfare of the public.

(e) An accredited fuel system evaporative loss control device shall equal or exceed the performance criteria established by the board for such new devices required on new motor vehicles, or in the alternative, must have an expected useful life of at least 50,000 miles of operation.

SEC. 4. Section 39180 of the Health and Safety Code is amended to read:

39180. In establishing tests and procedures the board shall adopt standards including, but not limited to, the following:

- (a) An accredited exhaust emission control device shall not cost more than eighty-five dollars (\$85), including the cost of installation. If the board certifies and requires more than one device for a single type of vehicle pursuant to Section

**Southern
California
Rock
Products
Association**

**Southern
California
Ready Mixed
Concrete
Association**



June 23, 1971

**The Honorable Paul V. Priolo
Chairman, Assembly Planning and Land Use Committee
State Capitol
Sacramento, California 95814**

Subject: SB 504 (Lagomarsino)

Dear Assemblyman Priolo:

We are writing to you with reference to SB 504, which we understand is still under consideration by the Assembly Planning and Land Use Committee.

We have followed the progress of this bill along with SB 1132 (Cologne) and SB 1204 (Zenovich) and wish to go on record as supporting the California Chamber of Commerce in their efforts to institute workable laws to prevent indiscriminate application of the doctrine of implied dedication where there is clearly no such donative intent on the part of the landowner, but where because of his benevolence and awareness to public interest he permits public access to such land for recreational and other beneficial uses.

Since the State Supreme Court handed down its decision in the Gion and Dietz cases, our members have been extremely concerned over the possibility of having to restrict free passage over their lands to the point of imposing constant vigilance over their properties. Due to the ever diminishing natural deposits, rock, sand, and gravel operators must of necessity preserve future mining sites for extended periods of time. Obviously, the so-called urban sprawl, with all its attendant problems, has made it increasingly difficult for aggregate producers to continue to fulfill the demands of the general public for this vital building material. This new case-law-imposed threat hardly enhances an already critical situation.

This industry subscribes to the idea of living in harmony with its neighbors. As a matter of fact, for the last two years we have diligently led efforts by the Surface Mining Industry to institute State laws for the reclamation of mined lands so as to guarantee for the people maximum utilization of the land. Although the subject of reclamation may be deemed to be far removed

The Honorable Paul V. Priolo
Page 2
June 23, 1971

from that of Implied Dedication, we nevertheless cite this as an example of our concern over the diminishing useable acreage in California.

While not necessarily disagreeing with the spirit and the intent of the Gion and Dietz decisions, we are nevertheless compelled to express our fears that certain concepts laid down in those cases may be misapplied to facts and circumstances not warranting it. Without the statutory protection of SB 504 and the other cited bills, owners of dormant but otherwise useable land have no recourse but to **take** any and all physical precautions to avoid the implication that they are giving away their property. In this day of environmental consciousness, fences, barricades, and other physical barriers to prevent trespassers from coming onto your property would appear repugnant to the very principle of good neighborliness.

Among arguments raised by notable opponents of SB 504 are that, "SB 504 would repeal the historic common law doctrine of Implied Dedication." If this line of reasoning were to be followed, there would be no need whatsoever for Statutory Law, since in every instance by enactment and adoption of a statute you would in effect be repealing some facet of the common law. What SB 504 does do is encourage private land owners to continue their policy of permitting public use of lands which would otherwise lie idle.

We in no way interpret the proposed Implied Dedication bills as attempting to repeal existing statutes dealing with the acquisition of rights to title by Adverse Possession, so that in the case of legitimately abandoned lands the people would still have inherent rights to claim and perfect new title.

We strongly urge the passage of SB 504 and related bills dealing with this subject.

Very truly yours,

SOUTHERN CALIFORNIA ROCK
PRODUCTS ASSOCIATION



Ernest E. Gallego
General Counsel

EEG:cjb

cc: Members, Assembly Planning and Land Use Committee

Introduced by Senator Bradley

February 3, 1970

REFERRED TO COMMITTEE ON JUDICIARY

An act to amend Section 846 of the Civil Code, and to amend Section 831.4 of the Government Code, relating to liability for injury on public property.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 846 of the Civil Code is amended to
 2 read:
 3 846. An owner of any estate in real property owes no duty
 4 of care to keep the premises safe for entry or use by others
 5 for taking of fish and game, fishing, hunting, camping, water
 6 sports, hiking, riding, or sightseeing or to give any warning
 7 of hazardous conditions, uses of, structures, or activities on
 8 such premises to persons entering for such purposes, except as
 9 provided in this section.
 10 An owner of any estate in real property who gives permis-
 11 sion to another to take fish and game, camp, hike or sightsee
 12 for entry or use for the above purposes upon the premises does
 13 not thereby (a) extend any assurance that the premises are
 14 safe for such purpose purposes, or (b) constitute the person
 15 to whom permission has been granted the legal status of an
 16 invitee or licensee to whom a duty of care is owed, or (c)
 17 assume responsibility for or incur liability for any injury to

LEGISLATIVE COUNSEL'S DIGEST

SB 291, as introduced, Bradley (Jud.). Injury on public property.
 Amends Sec. 846, Civ.C., and Sec. 831.4, Gov.C.

Revises laws relating to liability of owner of real property to persons
 entering or using property for various recreational purposes.

Revises laws excepting public entities and employees and grantors
 of public easement from liability for condition of certain recreational
 roads and trails.

Vote—Majority; Appropriation—No; Fiscal Committee—No.

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1 person or property caused by any act of such person to whom
2 permission has been granted except as provided in this section.

3 This section does not limit the liability which otherwise
4 exists (a) for willful or malicious failure to guard or warn
5 against a dangerous condition, use, structure or activity; or
6 (b) for injury suffered in any case where permission to take
7 ~~fish and game, camp, hike or sightsee to enter for the above~~
8 ~~purposes~~ was granted for a consideration other than the con-
9 sideration, if any, paid to said landowner by the state; or (c)
10 to any persons who are expressly invited rather than merely
11 permitted to come upon the premises by the landowner.

12 Nothing in this section creates a duty of care or ground of
13 liability for injury to person or property.

14 Sec. 2. Section 831.4 of the Government Code is amended
15 to read:

16 831.4. A public entity, public employee, or a grantor of a
17 public easement to a public entity for any of the following
18 purposes, is not liable for an injury caused by a condition of:

19 (a) Any unpaved road which provides access to fishing,
20 hunting, ~~or primitive camping, hiking, riding, water sports,~~
21 recreational or scenic areas and which is not a (1) city street or
22 highway or (2) county, state or federal highway or (3) public
23 street or highway of a joint highway district, boulevard dis-
24 trict, bridge and highway district or similar district formed
25 for the improvement or building of public streets or highways.
26 (b) Any ~~hiking, riding, fishing or hunting trail used for the~~
27 ~~above purposes.~~



SUMMARY DIGEST

of

Statutes Enacted and Resolutions Adopted

Including Proposed Constitutional Amendments

and

1969-1970 Statutory Record



CALIFORNIA LEGISLATURE

1970 Regular Session

DARRYL R. WHITE
Secretary of the Senate

JAMES D. DRISCOLL
Chief Clerk of the Assembly

Compiled by
GEORGE H. MURPHY
Legislative Counsel

LEGISLATIVE INTENT SERVICE (800) 666-1917

LEGISLATIVE INTENT SERVICE



LIS-6

Ch. 804 (SB 268) COLOGNE Adds Sec. 8608, Wat.C., re flood control works.

Directs Reclamation Board to establish and enforce standards for the maintenance and operation of levees, channels, and other flood control works of an authorized project or adopted plan, and requires board in adopting such standards to give full consideration to fish and wildlife, recreation, and environmental factors. Authorizes board to bring suit for prevention or abatement of violation of such standards as public nuisance.

Ch. 805 (SB 269) LAGOMARSINO Amends and adds various secs., H. & N.C., re yacht and ship brokers.

Redefines "broker" to exclude from term any person who charters, offers to charter, negotiates the charter of, leases, rents, places for lease or rent, or negotiates loans on, yachts or ships.

Redefines "yacht" and "ship" to mean any vessel for navigating in water which is propelled by machinery or sail, except sailboats 12 feet or less in length, rather than any vessel for navigating in water which is self-propelled or is propelled by sail, oars, paddle, or other mechanical means.

Requires person purchasing such yachts or ships for resale or taking yachts or ships in trade for resale to transfer title to such yacht or ship into his name and to have in his possession a good and sufficient bill of sale or other fit evidence of title regardless whether or not such person wishes to claim exemption under existing provisions, rather than requiring person purchasing yachts or ships for resale to transfer such title in his name and to keep in his possession such evidence if he wishes to claim exemption under existing provisions.

Permits Department of Navigation and Ocean Development to suspend or revoke license of broker or salesman for, among other specified acts, commingling money or other property of his principal with his own when yacht or ship involved in transaction is not his own, instead of permitting department to suspend or revoke license of broker or salesman for commingling money or other property of his principal with his own.

Eliminates provisions that permit department to adopt rules and regulations to classify yacht and ship brokers and salesmen.

Revises qualifications for licenses of yacht and ship brokers and salesmen. Requires department to issue such licenses based on examination covering all phases of business, rather than requiring department to issue such licenses covering all phases of business.

Permits department to extend certificate of convenience, which it may issue to executor or administrator of estate of deceased agent or broker or widow or other heir for maximum of 45 days to permit such person to act as broker in conduct of business of estate, beyond 45 days on showing of just and reasonable cause.

Makes technical changes.

Ch. 806 (SB 288) LAGOMARSINO Adds Secs. 3240.5, 3240.6, F. & G.C., re commercial hunting club license.

Requires persons in possession of property to obtain a commercial hunting club license if they impose any fee for any type of entry or use permit including renting or leasing of property, which includes the privilege of taking birds or mammals on the property if birds or mammals are taken on such property, except to a licensed commercial hunting club.

Provides that these provisions do not apply to nonprofit corporation, or other nonprofit organization, governmental entity or lands leased and used as specified, or land used for incidental camping purposes without the privilege of hunting, in addition to any licensed pheasant club.

Operative July 1, 1971, and provides that these provisions shall remain in effect only until the 91st day after adjournment of the 1973 Regular Session.

Provides that these provisions do not apply to licensed domesticated migratory game bird shooting areas, such proviso to be operative only if AB 849 is enacted.

Ch. 807 (SB 201) BRADLEY Amends Sec. 846, Civ.C., and Sec. 831.4, Gov.C., re injury on public property.

Revises laws relating to liability of owner of real property to persons entering or using property for various recreational purposes.

Revises laws excepting public entities and employees and grantors of public easement from liability for condition of certain recreational roads and trails.





EXHIBIT “H”

Note 6

be authorized to speak for all and by the execution of a private agreement deprive them of vested rights by attempting to make their interests dependent upon the performance of a legal duty, as by an agreement that the use of the alley might be refused to any adjoining property owner declining to pay the proportional share of any tax, assessment, or upkeep expense. *Crease v. Jurrell* (1924) 224 P. 762, 65 C.A. 554.

7. — Cost of improvements, maintenance and repair

Under grant of easement providing that if grantee should "desire to use said easement," the cost of "improving same" should be borne equally by owners of dominant and servient tenement, "use" of the easement meant development of easement by constructing roadway thereon and hence grantee, by recording "declaration of election to use easement," agreed to construction of roadway and to obligation to pay half of its cost. *McManus v. Sequoyah Land Associates* (1966) 49 Cal. Rptr. 592, 240 C.A.2d 348, 20 A.L.R.3d 1015.

Some of owners of private easement over and along a dirt road did not have right, without consent of all abutting property owners, who were co-owners in the easement, to cut trees, install culverts, regrade, widen, and pave the road and enforce contribution from the dissenting owners toward cost of such improvements. *Holland v. Braun* (1956) 204 P.2d 51, 139 C.A.2d 626.

Under provision of this section that, if easement in nature of private right of way is owned by more than one person, "cost of maintaining it in repair" should

be shared by each owner, paving of dirt road, which ran along a private easement, was not "maintaining it in repair". *Id.*

8. Actions and proceedings

In action to quiet title to easement for road purposes over defendants' land from highway to plaintiffs' residence on adjoining land and to enjoin defendants from asserting any claim therein, judgment, which provided that defendants did not have any estate, right, title, or interest in easement and were forever joined in and restrained from asserting any claim therein, but which also provided that defendants owned servient estate in fee simple, did not unreasonably restrain defendants from use of such estate. *Herzog v. Grosso* (1953) 259 P.2d 429, 41 C.2d 219.

9. Judgment

Judgment holding that defendant had easement in road was not ambiguous or conditional because judgment failed to specify whether defendant's right to use road was conditioned on his payment of his share of maintenance expense and, if so, what that share was and to whom it should be paid. *Taormino v. Denny* (1970) 83 Cal.Rptr. 359, 463 P.2d 711, 1 C.3d 679.

10. Judicial review

Where plaintiff had not applied to court for appointment of arbitrator in accordance with this section to apportion costs of easement maintenance and did not comply with other provisions of the section, he could not complain that court in his action for declaratory judgment refused to give him relief under such section. *Whitson v. Goudeseune* (1955) 290 P.2d 590, 137 C.A.2d 445.

§ 846. Permission to enter for recreational purposes

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

A "recreational purpose," as used in this section, includes such activities as fishing, hunting, camping, water sports, hiking, spelunking, sport parachuting, riding, including animal riding, snowmobiling, and all other types of vehicular riding, rock collecting, sightseeing, picknicking, nature study, nature contacting, recreational gardening, gleaning, winter sports, and viewing or enjoying historical, archaeological, scenic, natural, or scientific sites.

An owner of any estate or any other interest in real property, whether possessory or nonpossessory, who gives permission to another for entry or use for the above purpose upon the premises does not thereby (a) extend any assurance that the premises are safe for such purpose, or (b) constitute the person to whom permission has been granted the legal status of an invitee or licensee to whom a duty of care is owed, or (c) assume responsibility for or incur liability for any injury to person or property caused by any act of such person to whom permission has been granted except as provided in this section.

This section does not limit the liability which otherwise exists (a) for willful or malicious failure to guard or warn against a dangerous condition, use, structure or activity; or (b) for injury suffered in any case where permission to enter for the above purpose was granted for a consideration other than the consideration, if any, paid to said landowner by the state, or where consideration has been received from others for the same purpose; or (c) to any persons who are expressly invited rather than merely permitted to come upon the premises by the landowner.

Nothing in this section creates a duty of care or ground of liability for injury to person or property.

(Added by Stats.1963, c. 1759, p. 3511, § 1. Amended by Stats.1970, c. 807, p. 1530, § 1; Stats.1971, c. 1028, p. 1975, § 1; Stats.1972, c. 1200, p. 2322, § 1; Stats.1976, c. 1303, p. 5859, § 1; Stats.1978, c. 86, p. 221, § 1; Stats.1979, c. 150, p. 347, § 1; Stats.1980, c. 408, § 1.)

Historical Note

The 1970 amendment substituted "fishing, hunting" for "taking of fish and game" and added "riding" in the first [now, the second] paragraph; substituted "for entry or use for the above purposes" and "such purposes" for "to take fish and game, camp, hike or sightsee" and "such purpose" in the second [now, the third] paragraph; and substituted "to enter for the above purposes" for "to take fish and game, camp, hike or sightsee" in the third [now, the fourth] paragraph.

The 1971 amendment inserted the words "rock collecting" in the first [now, the second] paragraph.

The 1972 amendment included "animal and all types of vehicular riding" in the first [now, the second] paragraph.

The 1976 amendment added "spelunking" to the activities listed in the first [now, the second] paragraph.

The 1978 amendment rewrote the first paragraph which had read:

"An owner of any estate in real property owes no duty of care to keep the premises safe for entry or use by others for fishing, hunting, camping, water sports, hiking, spelunking, riding, including animal and all types of vehicular riding, rock collecting, or sightseeing or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purposes, except as provided in this section."; added the second paragraph; and added in the fourth paragraph "or where consideration has been received from others for the same purpose".

The 1979 amendment included "sport parachuting" in the second paragraph.

The 1980 amendment inserted in the first and third paragraphs the words "or any other interest" and "whether possessory or nonpossessory."

Forms

See West's California Code Forms, Civil.

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APR 25 1997

CLERK, U. S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
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DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

SHINGLE SPRINGS RANCHERIA,
Plaintiff,

v.

GRASSY RUN COMMUNITY SERVICES
DISTRICT, et al.,
Defendants.

CIV-S-96-1414 DFL JFM

MEMORANDUM OF OPINION
AND ORDER

GRASSY RUN COMMUNITY SERVICES
DISTRICT,

Counterclaimant and
Cross-Claimant,

v.

SHINGLE SPRINGS RANCHERIA, et
al.,

Counterdefendants and
Cross-Defendants.

I hereby certify that the annexed
instrument is a true and correct copy of
the original on file in my office

ATTEST: **JACK L. WAGNER**

Clerk, U. S. District Court,
Eastern District of California

By _____
Deputy Clerk

Dated 4/28/97

Shingle Springs Rancheria is a landlocked 160-acre parcel
of land in El Dorado County held in trust by the Bureau of
Indian Affairs for the Miwok Indians. The Rancheria is
surrounded by the Grassy Run subdivision, a residential
community. Road access to the Rancheria requires use of the
residential roads constructed for the Grassy Run subdivision.
The subdivision roads are narrow asphalt roads without a

1 shoulder that wend among the residents' homes, through the
2 changing rural terrain of the subdivision. Because plaintiff
3 Shingle Springs Rancheria is constructing a gaming casino at the
4 Rancheria, the Grassy Run roads have become the subject of
5 heated local controversy. Concerned about heavy traffic on
6 neighborhood roads, the residents of Grassy Run argue that the
7 roads through Grassy Run are private. The Rancheria contends
8 that the roads are public because defendant Grassy Run Community
9 Services District ("the District") maintains the roads, and
10 because members of the public may drive on the roads. The
11 parties now move for summary judgment on this issue. The
12 District also requests a preliminary injunction.¹

13 I.

14 The facts are largely undisputed. The Rancheria was formed
15 in 1920, but remained largely unoccupied until the 1970s.
16 Grassy Run was created by a series of four-by-four lot splits
17
18

19 In the complaint, which was filed on August 1, 1996, the
20 Rancheria alleges that the District is unlawfully restricting the
21 Rancheria's right to use the roads within the District's
22 jurisdiction. The Rancheria alleges that its federal constitutional
23 procedural and substantive due process rights are being violated
24 by the District. In addition to its claims under 42 U.S.C. § 1983,
25 plaintiff requests that the court enjoin the District from
26 interfering with the Rancheria's right to travel freely on the
27 Grassy Run roads, and that the court declare that the roads within
28 the District are public roads and that the District cannot deny
access to commercial vehicles traveling along the Grassy Run roads.
On October 23, 1996, the District filed counter- and cross-claims.
The District requests that the court declare that the Grassy Run
roads are private roads, that the District has the authority to
regulate the use of the roads, and that the residents of the
District have the authority to regulate the use of the roads. The
District also alleges that the Rancheria is overburdening its
easement and trespassing on the lands within the District's
jurisdiction.

1 beginning in 1974.² The original owners of the Grassy Run
2 property, Mr. and Mrs. Marlon Ginney ("Ginney"), created a
3 Homeowners' Association on May 29, 1974. In 1976, the United
4 States Department of the Interior, Bureau of Indian Affairs
5 ("BIA") agreed to an exchange of easements with Ginney. Ginney
6 delivered a "Contract and Grant of Easement" to the BIA granting
7 a public easement of access to the Rancheria over Grassy Run
8 roads. In return, the BIA granted Ginney and the residents of
9 Grassy Run a public easement of access over the Rancheria roads.
10 From 1977 until 1981, the BIA performed occasional maintenance
11 work on the Grassy Run roads.

12 The parties agree that the Ginney easement was invalid
13 because Ginney had no authority to make the grant. Under the
14 Covenants and Restrictions of the Homeowners' Association,
15 dedications of common areas of the property could only be
16 effective if contained in a recorded written instrument signed
17 by members of the Association entitled to cast three-fourths of
18 the vote of the membership. See Defs.' Request for Judicial
19 Notice Ex. 1. In June 1981, the Association declared the public
20 easement invalid but recorded an express easement granting the
21 Rancheria the private right to use the Grassy Run roads.' In
22

23 ² Accordingly, the provisions of the Subdivision Map Act,
24 Cal. Gov't Code §§ 66410 et seq., do not apply to Grassy Run. A
subdivision map is required for all subdivisions creating five or
25 more parcels. Id. § 66426.

26 The June 1, 1981 Notice of Invalid Contract and Grant of
Easement provides in pertinent part:
27 The Association hereby declares that no portion of its road
28 network is or ever has been a public right of way. Although
the Contract asserts that a public right of way would be
created over the roadways granted to the United States by the

1 March 1982, the BIA concluded that the June 1981 Grant of
2 Easement gave the Rancheria "only a non-exclusive right to the
3 use of the roadway" and that "while neither the members of the
4 homeowners association nor those people entitled to use or
5 reside in the Shingle Springs Rancheria can in any way interfere
6 with each other's use of the roadway, the road is not open for
7 use by the general public." Defs.' Request for Judicial Notice
8 Ex. 110 at 2. The BIA concluded that because the roads were not
9 public roads, it was no longer authorized to spend monies to
10 help maintain the Grassy Run roads. Id.

11 At the same time that the BIA determined that it would no
12 longer contribute to the maintenance of the Grassy Run roads,
13 the Grassy Run Homeowners' Association was encountering
14 difficulties in collecting its annual road maintenance
15 assessments from property owners. To better collect the
16 assessments, the Association petitioned the El Dorado County
17 Local Agency Formation Commission ("LAFCO") to form a Community
18

19 [the Ginneys], this action is without legal foundation and
20 therefore invalid
21 Whereas the Association does not desire to convey any portion
22 of its private road network to any public agency for the use
23 by the public, and through its Board of Directors has the
24 right to "control traffic on the private road network," . . .
25 . the public is given notice that all roadways within the
26 boundaries of the Association are private properties and
27 trespassing upon them is unlawful.
28 However, recognizing that the United States acted in good
faith and with proper authority in consummating [sic] the
Contract, the Association through its Board of Directors
grants an easement to the United States solely to the benefit
of the Miwok Tribe for the use of the private road network
beginning at Grassy Run Road to Rolling Rock Road to
Reservation Road to the boundaries of the Shingle Springs
Rancheria. This grant of use is subject to posted traffic
controls.
28 Defs.' Request for Judicial Notice Ex. 11.

1 Services District for road maintenance purposes.⁴ Such a
2 district would have the power to collect assessments as part of
3 the County's annual property tax billing. Babbitt Decl. ¶ 5.
4 On October 7, 1982 the LAFCO approved the petition to form the
5 Grassy Run Community Service District ("CSD"). Defs.' Request
6 for Judicial Notice Ex. 62, 64. On December 28, 1982, the
7 Governing Board of the LAFCO certified that it had adopted the
8 resolution ordering the formation of the Grassy Run CSD. *Id.*
9 Ex. 65. Also on December 28, 1982, the El Dorado County Board
10 of Supervisors passed Resolution 340-82 approving the formation
11 of the Grassy Run CSD. *Id.* Resolution 340-82 states that the
12 CSD was formed for the purposes of "opening, widening,
13 extending, straightening, and surfacing, in whole or part, . . .
14 any street in such district as authorized in subdivision (j) of
15 Section 61600 of the Government Code and the construction and
16 improvement of bridges . . . as authorized in subdivision (k) of
17 Section 61600 of the Government Code." *Id.* Beginning with
18 fiscal year 1983, the District received ad valorem property
19 taxes as a portion of its funding.⁵ The District has maintained
20 the Grassy Run roads from 1983 until the present day. Since
21 1983, the District has continued to receive a portion of the ad

22
23
24 ⁴ A district is defined as "an agency of the state, formed
25 pursuant to general law or special act, for the local performance
26 of governmental or proprietary functions within limited
boundaries." *Id.* § 56036 (West Supp. 1997). A community services
district is a district of limited power. See Cal. Gov't Code §
56037 (West. Supp. 1997).

27 ⁵ Cal. Rev. & Tax code § 2262: "Ad valorem property taxation
28 means any source of revenue derived from applying a property tax
rule to the assessed value of the property."

1 valorem property tax attributable to property in the District; a
2 share of revenues paid to the County by the State based on the
3 homeowner's exemption; and a special annual assessment of \$150
4 collected by the County from owners of each lot of at least five
5 acres within the District.⁶

6 II.

7 A property owner may dedicate private property to public
8 use. The Rancheria contends that by creating a public agency
9 and accepting public monies in connection with the maintenance
10 of the Grassy Run roads, the Grassy Run property owners
11 dedicated the roads to public use under the common law doctrine
12 of implied dedication. The District argues that the implied
13 dedication doctrine is irrelevant because the Rancheria's claim
14 of public access is governed by California Civil Code Section
15 1009, which expressly supersedes the common law of implied
16 dedication. The Rancheria contends that § 1009 applies only to
17 property used for recreational purposes and therefore does not
18 apply here.⁷

19 _____
20 ⁶ At oral argument, counsel agreed that approximately 70
21 percent (\$20,000) of the funds collected each year are from the
22 special assessment on property owners, while only 30 percent
(\$9,000) are from the ad valorem taxes.

23 ⁷ Section 1009 provides in full:

(a) The Legislature finds that:

24 (1) It is in the best interests of the state to
25 encourage owners of private real property to continue to make
their lands available for public recreational use to
supplement opportunities available on tax-supported publicly
owned facilities.

26 (2) Owners of private real property are confronted with
27 the threat of loss of rights in their property if they allow
or continue to allow members of the public to use, enjoy or
pass over their property for recreational purposes.

28 (3) The stability and marketability of record titles is

1
2 clouded by such public use, thereby compelling the owner to
3 exclude the public from his property.

4 (b) Regardless of whether or not a private owner of
5 real property has recorded a notice of consent to use of any
6 particular property pursuant to Section 813 of the Civil Code
7 or has posted signs on such property pursuant to Section 1008
8 of the Civil Code, except as otherwise provided in
9 subdivision (d), no use of such property by the public after
10 the effective date of this section shall ever ripen to confer
11 upon the public or any governmental body or unit a vested
12 right to continue to make such use permanently, in the
13 absence of an express written irrevocable offer of dedication
14 of such property to such use, made by the owner thereof in
15 the manner prescribed in subdivision (c) of this section,
16 which has been accepted by the county, city, or other public
17 body to which the offer of dedication was made, in the manner
18 set forth in subdivision (c).

19 (c) In addition to any procedure authorized by law and
20 not prohibited by this section, an irrevocable offer of
21 dedication may be made in the manner prescribed in Section
22 7050 of the Government Code to any county, city, or other
23 public body, and may be accepted or terminated, in the manner
24 prescribed in that section, by the county board of
25 supervisors in the case of an offer of dedication to a
26 county, by the city council in the case of an offer of
27 dedication to a city, or by the governing board of any other
28 public body in the case of an offer of dedication to such
29 body.

30 (d) Where a governmental entity is using private lands
31 by an expenditure of public funds on visible improvements on
32 or across such lands or on the cleaning or maintenance
33 related to the public use of such lands in such a manner so
34 that the owner knows or should know that the public is making
35 such use of his land, such use, including any public use
36 reasonably related to the purposes of such improvement, in
37 the absence of either express permission by the owner to
38 continue such use or the taking by the owner of reasonable
39 steps to enjoin, remove, or prohibit such use, shall after
40 five years ripen to confer upon the governmental entity a
41 vested right to continue such use.

42 (e) Subdivision (b) shall not apply to any coastal
43 property which lies within 1,000 yards inland of the mean
44 high tide line of the Pacific Ocean, and harbors, estuaries,
45 bays and inlets thereof, but not including any property lying
46 inland of the Carquinez Straits bridge, or between the mean
47 high tide line and the nearest public road or highway,
48 whichever distance is less.

49 (f) No use, subsequent to the effective date of this
50 section, by the public of property described in subdivision
51 (e) shall constitute evidence or be admissible as evidence
52 that the public or any governmental body or unit has any
53 right in such property by implied dedication if the owner
54 does any of the following actions:

1 The California legislature enacted § 1009 in reaction to
2 the California Supreme Court's decision in Gion v. City of Santa
3 Cruz holding that owners of beachfront property dedicated their
4 beach property to public use simply by permitting continuous,
5 unimpeded use by members of the general public. Section 1009
6 prohibits, in all but limited circumstances, an implied
7 dedication through public use alone.⁶ The legislature's

9
10 (1) Posts signs, as provided in Section 1008, and renews
11 the same, if they are removed, at least once a year, or
12 publishes annually, pursuant to Section 6066 of the
13 Government Code, in a newspaper of general circulation in the
14 county or counties in which the land is located, a statement
15 describing the property and reading substantially as follows:
16 "Right to pass by permission and subject to control of owner:
17 Section 1008, Civil Code."

18 (2) Records a notice as provided in Section 813.

19 (3) Enters into a written agreement with any federal,
20 state, or local agency providing for the public use of such
21 land.

22 After taking any of the actions set forth in paragraph
23 (1), (2), or (3), and during the time such action is
24 effective, the owner shall not prevent any public use which
25 is appropriate under the permission granted pursuant to such
26 paragraphs by physical obstruction, notice, or otherwise.

27 (g) The permission for public use of real property
28 referred to in subdivision (f) may be conditioned upon
reasonable restrictions on the time, place, and manner of
such public use, and no use in violation of such restrictions
shall be considered public use for purposes of a finding of
implied dedication.

⁶ It appears that no court has addressed whether section 1009
applies to all property or just to property used for recreational
purposes.

Section 1009 applies only prospectively to dedications of
property that occurred after its effective date. No California
court has applied § 1009 because in each case since 1971 involving
implied dedication, the public right to use the property vested
before 1971. See, e.g., Bess v. County of Humboldt, 5 Cal. Rptr.
2d 399, 402 n.3 (Cal. App. 1992) ("Civil Code sections 813 and 1009
now provide, essentially, that an implied dedication does not arise
simply because of permissive use. These statutes, however are to
be applied only prospectively and cannot affect any rights which
vested prior to 1971. The rights at issue here vested in the
1930s.")

1 purpose, as stated in subsection (a) of the statute, was to
2 encourage owners of private property to make their lands
3 available for public recreational use by removing the
4 possibility that such use could cloud or diminish title by
5 creating vested rights of public access.

6 While the purpose of the legislature was directed to access
7 to private property for public recreational use, the language of
8 the statute is not so limited. Indeed, the plain language of §
9 1009 prohibits the implied dedication of any property to public
10 use regardless of whether the public is using the property for
11 recreational, commercial, or other purposes. None of the
12 operative sections of the statute is limited to property used
13 for recreational purposes. Subsection (b) of the statute states
14 that "no use" of "any particular property . . . shall ever ripen
15 to confer upon the public or any governmental body or unit a
16 vested right to continue to make such use permanently" in the
17 absence of a written offer of dedication. Cal. Civ. Code §
18 1009(b). Subsection (d) addresses the situation "[w]here a
19 governmental entity is using private lands by an expenditure of
20 public-funds on visible improvements." In these circumstances a
21 public right of access to use the property, vested in the
22 government body, may be created. Such public use would include
23 "any public use reasonably related" to the purposes of the
24 publicly funded improvements. None of this language is
25 expressly or impliedly limited to expenditures or usage related
26 to recreation. Similarly, subsections (e) and (f), relating to
27 coastal property, are not limited to public use for recreational
28

1 purposes. Subsection (e) provides that an implied right of
2 access may arise as to defined coastal property, and subsection
3 (f) limits such an implied right of access so that "no use" by
4 the public shall confer public rights of access if the coastal
5 property owner posts certain signs. Neither of these
6 subsections limits its application to public use of the coast
7 for recreational purposes. Thus, if the public were to use a
8 section of coastline as a fishing area and were to create a
9 community fishmarket there, the property would become public
10 after five years so long as the owner failed to take the
11 measures prescribed in subsections (f) and (g).

12 Furthermore, had the legislature intended § 1009 to apply
13 only to property used for recreational purposes, it surely would
14 have included a definition of recreational use. The term
15 "recreational use" is not self-defining. It could include
16 driving on country roads to look at the countryside, take the
17 air, go to a roadside fruit stand, or go to a recreational
18 business, such as an amusement park or casino. Almost any
19 activity may fairly be described as recreational.' The court
20 would be engaged in legislation were it to try to define
21 "recreational use" and then impose such a limitation on § 1009
22 when the legislature neither attempted to define "recreational
23 use" nor provided any standards by which a definition might be

24
25 ' For example, is the public's use of a boardwalk along a
26 beach "recreational" or "commercial" if many of the people are
27 walking along the boardwalk in order to shop at the stores lining
28 the boardwalk? Is the public's use of a roadway to drive to a
casino recreational or commercial? From the casino patron's point
of view, the use is probably recreational, while from the casino
owner's point of view, the use is commercial.

1 drafted. The absence of any limiting language in the operative
2 subsections of § 1009 coupled with the absence of any definition
3 of recreational use is a clear indication that the statutory
4 language was not intended to be limited to implied dedications
5 based on public recreational use. In short, because the plain
6 language of § 1009 contains no limitations on its application to
7 a particular kind of public use, the court will not imply any
8 such limitation.¹⁰

9 Under § 1009 the Grassy Run roads remain private. Section
10 1009(d) permits a limited implied dedication of property to
11 public use where a governmental entity expends public funds on
12 "visible improvements on or across [private lands] or on the
13 cleaning or maintenance related to the public use of such lands
14 in a manner so that the owner knows or should know that the
15 public is making such use of his land" for five years without
16 the owner either granting express permission to continue or
17 taking steps to prohibit such use. *Id.* § 1009(d). If the
18 governmental activity and improvements or "any public use
19 reasonably related to the purposes of such improvement" continue
20 unimpeded for five years, such use, "shall . . . ripen to confer
21 upon the governmental entity a vested right to continue such
22 use." *Id.* Thus, even if the Rancheria were to prove that the
23 homeowners in Grassy Run accepted the District's maintenance of

24
25
26 ¹⁰ Additionally, the fact that no other statute regarding the
27 dedication of property limits its application to property used for
28 a specific purpose suggests that § 1009 is not limited to property
used for recreational purposes. See Cal. Civ. Code § 1008; Cal.
Civ. Code § 813; Cal. Gov't Code § 7050. These other statutes are
referenced in § 1009 (b) and (c).

1 the Grassy Run roads as well as whatever associated public use
2 of the roads occurred as a result, the Rancheria would prove at
3 most that the District has a right to continue maintaining the
4 roads and a right to continue permitting public use of the
5 roads. It would not prove that a right to use the roads had
6 vested in the general public. Aside from the exemption for
7 coastal property contained in subsection (e), § 1009 nowhere
8 permits an implied dedication of property to unlimited use by
9 the general public.

10 III.

11 Alternatively, even under the common law doctrine of
12 implied dedication, the Grassy Run roads would remain private.
13 A common law dedication of property to the public can be proved
14 either by showing acquiescence of the owner in use of the land
15 under circumstances that negate the idea that the use is under a
16 license (implied dedication in fact) or by establishing open and
17 continuous use by the public for the prescriptive period
18 (implied dedication in law). Gion v. City of Santa Cruz, 84
19 Cal. Rptr. 162, 167 (Cal. 1970); see also Union Transp. Co. v.
20 Sacramento County, 42 Cal. 2d 235, 240 (1954). A party alleging
21 implied dedication in fact must prove that the owner intended to
22 dedicate the property to the public. "The question of intent is
23 paramount" and unless such intent "expressly appears" or can be
24 fairly inferred from the acts of the donor, there is no valid
25 dedication." People v. Marin County, 103 Cal. 223, 228 (1894).
26 Whether an owner has made an offer is a question of fact
27 requiring an examination of all the pertinent circumstances.

1 Hays v. Vanek, 266 Cal. Rptr. 856, 861 (Cal. App. 1989) (citing
2 Flavio v. McKenzie, 32 Cal. Rptr. 535, 537 (Cal. App. 1963)).
3 The party must also prove that the public accepted the owner's
4 offer. "It is not necessary that the acceptance by the public
5 be manifested by any direct action Such acceptance may
6 be shown by mere use without any formal action in relation
7 thereto by the municipal authorities." City of Venice v. Short
8 Line Beach Land Co., 180 Cal. 447, 450 (1919).

9 Where a party alleges implied dedication in law, however,
10 direct proof of the owner's intent is not necessary. The party
11 merely needs to prove that the public used the property
12 continuously for at least the previous five years in a manner
13 that indicates that the users thought the property was public.
14 This determination is made by examining the totality of the
15 circumstances. Union Transp. Co., 42 Cal. 2d at 240-41. The
16 party must show that various groups of people used the property,
17 Gion, 84 Cal. Rptr. at 168, and that their use was
18 "substantial." County of Orange v. Chandler-Sherman Corp., 126
19 Cal. Rptr. 765, 768 (Cal. App. 1976); Aptos Seascape Corp. v.
20 County of Santa Cruz, 188 Cal. Rptr. 191, 201 (Cal. App. 1982).
21 "If only a limited and definable number of persons have used the
22 land, those persons may be able to claim a personal easement but
23 not dedication to the public." Gion, 84 Cal. Rptr. at 168. If
24 the party shows uninterrupted public use for more than five
25 years, the owner's intent to dedicate the property is presumed.
26 The burden then shifts to the owner of the property to "either
27 affirmatively prove the grant of a license to use the property,
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1 or demonstrate a bona fide effort to attempt to prevent public
2 use." Aptos Seascap, 188 Cal. Rptr. at 201.

3 Whether an owner's efforts to halt public use are adequate
4 in a particular case will turn on the means the owner uses
5 in relation to the character of the property and the extent
6 of the public use. . . . If the fee owner proves that he
7 has made more than minimal and ineffectual efforts to
8 exclude the public, then the trier of fact must decide
9 whether the owner's activities have been adequate. If the
owner has not attempted to halt public use in any
significant way, however, it will be held as a matter of
law that he intended to dedicate the property.

9 Gion, 84 Cal. Rptr. at 169.

10 Neither an implied in fact nor an implied in law dedication
11 occurred on the facts here. There was no implied in law
12 dedication for the reason that the Rancheria has shown no more
13 than intermittent public use for the last five years. The
14 record is notably lacking in any evidence demonstrating
15 substantial public use over the past five years. As to an
16 implied in fact dedication, the circumstances do not support it.
17 The District and the Association never intended to make a public
18 dedication. The clearest demonstration of the Association's
19 intent is the June 1, 1981 Notice of Invalid Contract and Grant
20 of Easement filed by the Association which simultaneously
21 disclaimed any public right of access and granted to the BIA for
22 the Rancheria a private easement. Moreover, the members of the
23 Rancheria understood that the Association had not intended to
24 dedicate the subdivision roads to the public. In an August 15,
25 1994, letter to the Assistant Secretary of the BIA, the Chair of
26 the Rancheria explained that the 1981 "non-exclusive easement
27 does not provide adequate access to the Rancheria for Tribal
28 members. . . . Any plans the Tribe has for economic or social

1 development are negated if the public cannot obtain access to
2 the Rancheria. The Tribe does not have public use rights to
3 these roads, and so the Tribe does not have adequate access to
4 the Rancheria." Johnson Decl. Ex. 3 at 2. Finally, the absence
5 of any sustained or substantial public use again is significant
6 in suggesting an absence of intent by the property owners to
7 make a dedication or acceptance of a dedication by the public.

8 The Rancheria argues that a dedication may be found from
9 the acceptance of public funds by the District, by the very
10 creation of the District, and by the invitation to members of
11 the public to attend District meetings. Even taken together,
12 these factors are not sufficient to find a dedication. Although
13 "[e]vidence that the users looked to a governmental agency for
14 maintenance of the land is significant in establishing an
15 implied dedication to the public,"¹¹ the Rancheria has pointed to
16 no case finding an implied dedication merely on the basis of
17 such evidence. Similarly, the court is directed to no provision
18 of law that conditions the creation of a community services
19 district on a dedication to the public of the property subject
20 to the district. The fact that the private landowners in the
21 Grassy Run subdivision created a community services district and
22 accepted public monies is not enough to fairly infer an intent
23 to dedicate the roads to public use, especially in the face of
24 the clear statements of the landowners to the contrary and the
25 absence of substantial public use. Cf. Tischauer v. City of

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27 ¹¹ Gion v. City of Santa Cruz, 84 Cal. Rptr. 162, 168 (Cal.
28 1970) (citing Washington Boulevard Beach Co. v. City of Los Angeles, 38 Cal. App. 2d 135, 137-38 (1940)).

1 Newport Beach, 37 Cal. Rptr. 141 (Cal. App. 1964) (finding that
2 entire 40-foot width of avenue had been dedicated to public use
3 because in 1915 the City adopted and recorded an official map
4 declaring the avenue to be an open public street, the City
5 thereafter maintained a six-foot sidewalk along with street
6 lighting facilities, the City did not assess property taxes
7 against the street areas, and because the public used the
8 sidewalk as a public walk); City of Laguna Beach v. Consolidated
9 Mortg. Co., 155 P.2d 844, 849 (Cal. App. 1945) (finding that 14-
10 foot wide strip of land adjacent to ocean had been dedicated to
11 public use because owners had voluntarily built a 14-foot wide
12 wooden boardwalk on the land, thus inviting and encouraging "a
13 continuous use by the public which is inconsistent with any idea
14 that [the use] was intended to be temporary and merely
15 permissive"). Finally, a limited invitation to the public to
16 attend infrequent District meetings does not establish an intent
17 by property owners to make an unrestricted grant of access to
18 members of the public. Nor is there any evidence that members
19 of the public in any substantial number ever attended these
20 meetings.

21 Thus, even if the court is mistaken as to the application
22 of § 1009, the Rancheria is not entitled to a declaration that
23 the subdivision roads are public under the common law doctrine
24 of implied dedication.

25 IV.

26 The Rancheria offers three other arguments that the Grassy
27 Run roads are public roads. None is persuasive. First, the
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1 Rancheria contends that because the District was formed to
2 maintain "streets" within the District's boundaries, the roads
3 must be public. Under California Vehicle Code § 590 a street is
4 defined as "a way or place of whatever nature, publicly
5 maintained and open to the use of the public for purposes of
6 vehicular travel." The El Dorado County Board approved the
7 formation of the District in Resolution 340-82. The Resolution
8 states that the "purposes for which the Grassy Run Community
9 Services District is formed is the opening, widening, extending,
10 straightening, and surfacing, in whole or in part, of any street
11 . . . as authorized in subdivision (j) of Section 61600 of the
12 Government Code."¹² Defs.' Request for Judicial Notice Ex. 65.
13 According to the Rancheria, because the District was formed for
14 the purpose of maintaining "streets," and because "streets" are
15 defined elsewhere as public ways, the roads within the
16 District's boundaries must be public ways. This argument is
17 rather attenuated. Resolution 340-82 adopts almost verbatim the
18 language of Government Code § 61600(j). Neither § 61600(j) nor
19 Resolution 340-82 cross-references the Vehicle Code definition
20 of "street," and it would be quite a leap to find a public
21 dedication merely by the use of a term that is in common use.

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¹² Section 61600 provides in part:

A district formed under this law may exercise the powers hereinafter granted for such of the following purposes as have been designated in the petition for the formation of such district . . . (j) The opening, widening, extending, straightening, surfacing, and maintaining, in whole or part of any street in such district, subject to the consent of the governing body of the county or city in which said improvement is to be made.

Cal. Gov't Code § 61600.

1 The Rancheria also argues that because the California
2 legislature has granted to certain community services districts
3 the express authority to limit public access to district roads,
4 see Cal. Gov't Code § 61621.8,¹³ no such limits can be placed on
5 any other district's roads without a similar grant of authority.
6 The Rancheria misses the point of this code section. The
7 purpose of the legislation, as stated by the Legislature, was to
8 give added authority to a district when the district was itself
9 the owner of the roads. In such a situation, without expanded
10 authority, a district might lack the power to regulate access
11 because such power is not among the enumerated powers in Gov't
12 Code § 61600 et seq. In this case, the District is not the
13 owner of the roads and the ultimate question is whether the
14 property owners can place limitations on public use of the
15 roads. Indeed, by providing authority to limit access to
16 districts when the districts own the roads, the legislation
17 suggests that the same authority already resides in the
18 landowners in districts in which the district is not the owner
19 of the roads. Thus, if anything, the legislation suggests that

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22 ¹³ This section provides in relevant part:

23 (a) This section shall apply only to the Bear Valley
24 Community Services District, the Bell Canyon Community
25 Services District, the Wallace Community Services District,
26 the Lake Sherwood Community Services District, and the Saddle
27 Creek Community Services District, and subdivisions (b) and
28 (d) to the Cameron Estates Community Services District.

(b) Notwithstanding any other provisions of law, in the
case of roads which a district owns and which are not
formally dedicated to or kept open for use by the public for
the purpose of vehicular travel, the district may by
ordinance adopt regulation which limit access to and the use
of those roads to landowners and residents of the district.
Cal. Gov't Code § 61621.8.

1 roads maintained by a district retain their private status.

2 Finally, the Rancheria argues that the roads within the
3 District's boundaries must be public because the California
4 Constitution prohibits gifts of public funds for private
5 purposes. The Rancheria argues that because the District
6 accepted the public funds generated by the ad valorem taxes, the
7 court must find that the roads are public or that the District
8 has violated the California Constitution. The District contends
9 that the County "acted illegally in allocating [the tax funds]
10 to the District." Defs.' Reply at 9 n.11. Whether there has
11 been a State constitutional violation is a question for another
12 day. Even if it is correct that the funds should not have been
13 given to the District, this would not transform the status of
14 the otherwise private roads into public roads.

15 V.

16 Defendants request a preliminary injunction. However, it
17 is unclear to the court what the precise terms of such an
18 injunction would be. The court will require further briefing on
19 this request after the parties have had an opportunity to
20 reconsider their positions in light of this opinion.

21 Accordingly, defendants' motion for partial summary

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1 judgment is GRANTED and plaintiff's motion for partial summary
2 judgment is DENIED. Defendants' request for injunctive relief
3 is DENIED.

4 IT IS SO ORDERED.

5 Dated: 25 April 1997.

6 David F. Levi
7 DAVID F. LEVI
8 United States District Judge
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CERTIFICATE OF MAILING

I am and was at all times herein mentioned over the age of 18 years and not a party to the action in which this service is made. At all times herein mentioned I have been employed in the County of Los Angeles in the office of a member of the bar of this court at whose direction the service was made. My business address is 225 S. Lake Ave., Suite 1400, Pasadena, California 91101.

On May 16, 2016, I served an executed copy of the Request for Judicial Notice in Support of Answer Brief on the Merits of Richard Erickson, Wendie Malick, Richard B. Schroder, and Andrea D. Schroder

Pursuant to the court's e-Submissions procedures, a true and correct copy was uploaded through their on-line system. The original and eight copies were deposited in the facility regularly maintained by Federal Express, in a sealed envelope with delivery fees fully provided for and addressed as follows

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct and, that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 16, 2016 at Pasadena, California.



LORRAINE V. BILLE